34(L) 2/14/64

Memorandum 64-7

Subject: Study No. 34(L) - Uniform Rules of Evidence (Article II. Judicial Notice)

This tentative recommendation is scheduled for approval for printing at the February meeting.

Attached is an extra copy of the tentative recommendation. Please mark any suggested revisions in the Comments on this copy and turn it in to the staff at the February meeting.

Attached also are:

Exhibit I (pink pages) - Comments of Northern Section of State Bar Committee to Consider Uniform Rules of Evidence

Exhibit II (green pages) - Comments of Southern Section of State Bar Committee to Consider Uniform Rules of Evidence

Exhibit III (yellow pages) - Extract from research study

The following is an analysis of the comments of the State Bar Committee:

Rule 9. This rule was approved as drafted by the Northern Section. The Southern Section suggests that the words "through the pleadings or otherwise" be deleted from subdivision (4)(b) as superfluous. The quoted language is taken from the existing statute on judicial notice of foreign law. See subdivision (4) of Section 1875 on page 34 of the tentative recommendation.

Consideration should be given to revising subdivision (4)(b) of Rule 9 to read the same in substance as the existing statute on judicial notice. The revised Rule would read:

> (b) Has given each adverse party such notice of the request through the pleadings or otherwise as [~~will~~] is reasonable to enable such adverse party to prepare to meet the request.

It should be noted, however, that if a party does not meet the requirements of Rule 9(4), the judge may, in his discretion, take judicial notice of the matter under Rule 9(3).

Rule 10. The Northern Section would limit the power of the judge to resort to the advice of persons learned in the subject matter. See indented quotation on page 1 of Exhibit I (pink sheets).

As an alternative to the suggestion indicated above, the Northern Section would revise Rule 10(2)(b) to read:

> (b) In cases falling within [~~paragraph (f) of~~] subdivision (3) of Rule 9, if the judge resorts to the advice of persons learned in the subject matter, such advice, if not received in open court, shall be in writing and made a part of the record in the action or proceeding.

The Southern Section was divided 2-2 on the second alternative (set out above as indented quotation). Two members felt that the requirement would unnecessarily inhibit the use of the technique of judicial notice, which they feel is an appropriate device to eliminate the necessity of introducing unnecessary evidence.

You will recall that Professor Chadbourn suggested the deletion of what is now paragraph (b) of Rule 10(2). He indicates that the language was inserted in the judicial notice statute by a 1957 amendment and is limited to judicial notice of the law of foreign countries. See Exhibit III for an extract from the research study on this matter. Professor Chadbourn would delete the provision even insofar as it applies to judicial notice of the law of foreign countries.

Except as noted above, Revised Rule 10 was approved by the State Bar Committee.

Rule 10.5. This rule was approved by the Northern and Southern Sections. One member of the Southern Section objected to that portion of Rule 10.5(b) that gives the judge the right to dismiss.

Rule 11. The Northern Section approved this rule as drafted. The Southern Section suggests in substance that subdivision (1) be revised to read:

> (1) If a matter judicially noticed is other than one specified in paragraph (a) of subdivision (1) of Rule 9, the judge shall at the earliest practicable time indicate for the record the matter which is judicially noticed and the tenor thereof.

This revision would make requirements of the provision quoted above apply to notice of regulations and similar enactments of this State and the United States and to notice of the rules of court of this State and of the United States.

The staff believes there is merit to the suggestion of the Southern Section.

Rule 12. The Southern Section approved this rule as revised. The Northern Section objects to the deletion of subdivision (2) of the URE rule. See Comment on page 2 of Exhibit I (pink sheets). We deleted the subdivision primarily because no comparable provision is contained in other URE rules and we saw no need to include such a provision in only one rule.

Respectfully submitted,

John H. DeMoully,
Executive Secretary

Memo 64-7

EXHIBIT I

January 16, 1964

California Law Revision Commission
School of Law
Stanford University
Stanford, California

Attention: Mr. John H. DeMoully

Gentlemen:

The Northern Section of the Committee to Consider Uniform Rules of Evidence met on January 14, 1964, to consider Article II - Judicial Notice.

Rule 9. Facts Which Must or May Be Judicially Noticed.

This Rule was considered section by section and was approved.

Rule 10. Determination As To Propriety of Taking Judicial Notice and Tenor of Matter Noticed.

Mr. Liebermann expressed himself as not in accord with section (2)(a) of this Rule. It was his opinion that this section gives the judge too wide a latitude in seeking advice from persons outside of court on questions other than foreign law and without being required to make such consultation part of the record. It was Mr. Liebermann's position that that part of §1875 of the Code of Civil Procedure, reading as follows. expressed the sounder and safer rule.

> "In all these cases the court may resort to its aid to appropriate books or documents of reference. In cases arising under subdivision 4 of this section, the court may also resort to the advice of persons learned in the subject matter, which advice, if not received in open court, shall be in writing and made a part of the record in the action or proceeding."

He therefore suggested that the first sentence of the foregoing paragraph should be substituted for paragraph (2)(a).

The Committee approved this suggestion.

As an alternative, however, if the foregoing suggestion does not meet with the approval of all parties concerned, the Committee believed that section (2)(b) should not be confined to cases falling within paragraph (f) of subdivision (3) of

Rule 9, and that (b) in this case should be reworded to read as follows:

> "In all cases falling within subdivision (3) of Rule 9, if the judge resorts to the advice of persons learned in the subject matter, such advice, if not received in open court, shall be in writing and made a part of the record in the action or proceeding."

Except as hereinbefore noted, Rule 10 was approved.

Rule 10.5. Procedure When Judge Unable To Determine What Foreign Law Is.

This Rule was approved.

Rule 11. Noting For Record Matter Judicially Noticed; Instructing Jury.

This Rule was approved.

Rule 12. Judicial Notice In Proceedings Subsequent To Trial.

Mr. Pattee reported upon this Rule and stated that it met with his approval except that in his opinion section (2) of the URE version which has been eliminated by the Law Revision Commission should be reinstated. Even though section (2), as stated by the Law Revision Commission, is existing law and well-established by the cases, nevertheless, we are supposed to be adopting a uniform code of evidence which sets forth existing law except where the law is to be changed. Thus the proposed code sets forth many rules which are established by existing case law. Mr. Pattee could see no reason why the same treatment should not be given to section (2).

The Committee approved Mr. Pattee's suggestion.

Rule 12 as revised by the Commission, with the exception hereinbefore noted, was approved.

Sincerely yours,

S/LAWRENCE C. BAKER
Lawrence C. Baker, Chairman
State Bar Committee on
Uniform Rules of Evidence

EXHIBIT II

California Law Revision Commission
School of Law
Stanford University
Stanford, California

Attention: Mr. John H. DeMoully

Gentlemen:

The Southern Section of the Committee to Consider Uniform Rules of Evidence met on January 29, 1964, to consider Article II - Judicial Notice.

Rule 9. Facts Which Must or May Be Judicially Noticed.

It was the feeling of the Committee that Section 4(b) should be amended by striking therefrom the language "through the pleadings or otherwise" since this language seems superfluous.

Rule 10. Determination As To Propriety of Taking Judicial Notice and Tenor of Matter Noticed.

Mr. Westbrook and Mr. Heggeness would support the second alternative set forth in the report of the Northern Section. In addition, they would like to see a provision providing, in substance, that in all cases where a judge relies on sources other than his own knowledge or advice of persons learned in the subject matter that he be required to identify that source on the record. Mr. Henigson and Mr. Newell felt that to impose the requirements suggested by Messrs. Westbrook and Heggeness would unnecessarily inhibit the use of the technique of judicial notice, which they feel is an appropriate device to eliminate the necessity of introducing unnecessary evidence.

Rule 10.5. Procedure When Judge Unable To Determine What Foreign Law Is.

Messrs. Westbrook, Henigson and Newell approved of the rule. Mr. Heggeness objected to that portion of 10.5(b) which gives the judge the right to dismiss.

Rule 11. Noting For Record Matter Judicially Noticed; Instructing Jury.

It was the unanimous feeling of the Committee that subsection (1) should read as follows:

"If a matter judicially noticed is other than the common law or constitution or public statutes of this state or of the

United States, the judge shall at the earliest practicable time indicate for the record the matter which is judicially noticed and the tenor thereof."

Rule 12. Judicial Notice In Proceedings Subsequent To Trial.

This rule was approved.

Very truly yours,

Robert M. Newell, Vice-Chairman
State Bar Committee on
Uniform Rules of Evidence

RMN:em

EXHIBIT III

RULE 10

Subdivision (2).

Rule 10, subdivision (2) provides as follows:

> "(2) In determining the propriety of taking judicial notice of a matter or the tenor thereof, (a) the judge may consult and use any source of pertinent information, whether or not furnished by a party, and (b) no exclusionary rule except a valid claim of privilege shall apply."

The comparable provision of § 1875 is that "the court may resort for its aid to appropriate books or documents of reference". It is further provided that in "cases arising under subdivision 4 of this section [viz., notice of foreign country law], the court may also resort to the advice of persons learned in the subject matter, which advice, if not received in open court, shall be in writing and made a part of the record in the action or proceeding." The provision last quoted was added by amendment in 1957.[36]

Conceivably this amendment might be construed as indicative of the legislative intent that in all cases, save subdivision 4 cases, the court is limited to books and documents of reference. We think, however, that such construction would not be sound. Long before the 1957 amendment, the Supreme Court stated on at least two occasions that for "the purpose of informing itself, the court [in taking judicial notice] might inquire of others, or refer to books or documents, or any other source of information which it might deem authentic . . ." [Italics added.][37]

There is no suggestion, either express or implied, that the judge's inquiries must be in open court or must be made part of the record. We

perceive no reason to believe that in making the 1957 amendment it was the purpose of the legislature to nullify this general rule.[38]

If our belief is correct, the restrictions introduced by the 1957 amendment in re foreign law (that if the judge consults foreign law experts he must do so in open court or in writing made part of the record) must be viewed as an exception to the general rule that the court may "inquire of others . . . or refer to any source . . . which it might deem authentic."

Is this exception justified? Or, to rephrase the question, is Rule 10 (2) desirable to the extent that it would abrogate this exception? In our opinion the exception is not justified. That is, it is desirable to accept Rule 10 (2) and thereby nullify the present special exception in re foreign law.

When the question is one of local or federal or sister-state law the judge may under the general rule "inquire of others" without making the inquiry in open court or in writing as part of the record. (It is a fairly common practice for judges to "inquire" informally of law professors.) We see no reason why the situation should be different when the question is one of foreign law. In fact, the present requirement that advice must be received in open court or in writing made part of the record seems to us to be in some measure a return to the philosophy of the old and generally discredited[39] common-law idea that notice could not be taken of foreign law and that formal proof must therefore be made.[40]

STATE OF CALIFORNIA

C A L I F O R N I A L A W

R E V I S I O N C O M M I S S I O N

TENTATIVE RECOMMENDATION AND A STUDY

Relating to

The Uniform Rules of Evidence

Article II. Judicial Notice

April 1964

California Law Revision Commission
School of Law
Stanford University
Stanford, California

Draft: November 12, 1963
Revised: December 1, 1963
Revised: December 21, 1963

LETTER OF TRANSMITTAL

To His Excellency, Edmund G. Brown
Governor of California
and to the Legislature of California

The California Law Revision Commission was authorized by Resolution Chapter 42 of the Statutes of 1956 to make a study "to determine whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference."

The Commission herewith submits a preliminary report containing its tentative recommendation concerning Article II(Judicial Notice) of the Uniform Rules of Evidence and the research study relating thereto prepared by its research consultant, Professor James H. Chadbourn, formerly of the U.C.L.A. Law School, now of the Harvard Law School. Only the tentative recommendation (as distinguished from the research study) expresses the views of the Commission.

This report is one in a series of reports being prepared by the Commission on the Uniform Rules of Evidence, each report covering a different article of the Uniform Rules.

In preparing this report, the Commission considered the views of a Special Committee of the State Bar appointed to study the Uniform Rules of Evidence. The Report of the New Jersey Supreme Court Committee on Evidence (1963) also was of great assistance to the Commission. Portions of some of the comments in this report are based on similar comments in the report of the New Jersey Committee.

This preliminary report is submitted at this time so that interested persons will have an opportunity to study the tentative recommendation and give the Commission the benefit of their comments and criticisms. These comments and criticisms will be considered by the Commission in formulating its final recommendation. Communications should be addressed to the California Law Revision Commission, School of Law, Stanford University, Stanford, California.

Respectfully submitted,

JOHN R. McDONOUGH, JR.
Chairman

April 1964

TENTATIVE RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

THE UNIFORM RULES OF EVIDENCE

Article II. Judicial Notice

The Uniform Rules of Evidence (hereinafter sometimes designated as "URE") were promulgated by the National Conference of Commissioners on Uniform State Laws in 1953.[1] In 1956 the Legislature directed the Law Revision Commission to make a study to determine whether the Uniform Rules of Evidence should be enacted in this State.[2]

The tentative recommendation of the Commission on Article II of the Uniform Rules of Evidence is set forth herein. This article, consisting of Rules 9 through 12, relates to judicial notice.

Judicial notice is a judicial shortcut. It is used as a substitute for formal proof of matters of law and of facts which everyone knows, or should know, are true. Thus, the process of judicial notice shortens trial time and saves money, for it eliminates unnecessary technicalities of proof, such as the requirement of authentication, expert testimony, best evidence, and the like. In addition, judicial notice promotes rational fact finding; it prevents jurors from erroneously finding as untrue facts which cannot reasonably be disputed.

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1. A pamphlet containing the Uniform Rules of Evidence may be obtained from the National Conference of Commissioners on Uniform State Laws, 1155 East Sixtieth Street, Chicago 37, Illinois. The price of the pamphlet is 30 cents. The Law Revision Commission does not have copies of this pamphlet available for distribution.

2. Cal. Stats. 1956, Res. Ch. 42, p. 263.

URE Article II provides a comprehensive scheme for judicial notice. Judicial notice of some matters is mandatory without a request. Other matters may be noticed without a request and must be noticed if requested by a party who gives notice of the request to the adverse parties and furnishes sufficient information to the judge. The Uniform Rules provide parties with a reasonable opportunity to present information to the judge as to the propriety of taking judicial notice of a matter and as to the tenor of the matter to be noted.

Most of California's existing statutory law in regard to judicial notice is found in Section 1875 of the Code of Civil Procedure. This section lists the matters of which "courts take" judicial notice. But the California courts have not considered the section as limiting the extent of their power to take judicial notice and, although Section 1875 does not so provide, our courts take judicial notice of matters of common knowledge which are certain and indisputable. As a result, much of the California law on judicial notice can be found only in judicial decisions.

By way of contrast with the URE scheme, the existing California law is unclear (e.g., it is not clear which matters must be noticed and which matters may but are not required to be noticed) and inconsistent (e.g., an ordinance must be judicially noticed in a criminal case under Penal Code Section 963, but ordinarily the same ordinance may not be judicially noticed in a civil case by a superior or appellate court). Moreover, unlike the URE, the existing law does not provide the parties with adequate procedural protections. Except as to the law of foreign countries, there does not appear to

be any requirement that the adverse party be notified of a request to take judicial notice. And there is no statutory guarantee that the parties will have a reasonable opportunity to present information to the judge as to the propriety of taking judicial notice and as to the tenor of the matter to be noticed.

The Commission tentatively recommends that URE Article II, revised as hereinafter indicated, be enacted as law in California.[3] The revised article slightly broadens the list of matters of which judicial notice may be taken under existing law and requires that judicial notice be taken of some matters. This should result in more use of judicial notice with a corresponding reduction in trial time. Any fear of expanded judicial notice should be offset by the procedural protections that will be provided the parties under the revised article.

In the material which follows, the text of each rule proposed by the Commissioners on Uniform State Laws is set forth and the amendments tentatively recommended by the Commission are shown in strikeout and italics. The text of a new rule tentatively recommended by the Commission but not included in the URE is shown in italics. Each rule is followed by a comment setting forth the major considerations that influenced the Commission in recommending important substantive changes in the rule or in corresponding California law.

For a detailed analysis of the various rules and the California law relating to judicial notice, see the research study beginning on page 000. This study was prepared by the Commission's research consultant, Professor James H. Chadbourn, formerly of the U.C.L.A. Law School, now of the Harvard Law School.

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3. The final recommendation of the Commission will indicate the appropriate code section numbers to be assigned to the rules as revised by the Commission.

RULE 9. FACTS WHICH MUST OR MAY BE JUDICIALLY NOTICED.

(1) Judicial notice shall be taken without request by a party [~~,~~] of:

(a) The [~~common-law, constitutions and public statutes~~] decisional, constitutional, and public statutory law [~~in force in~~] of the United States and of every state, territory, and [~~jurisdiction~~] possession of the United States. [~~, and~~]

(b) Any matter made a subject of judicial notice by Section 11383, 11384, or 18576 of the Government Code or by Section 307 of Title 44 of the United States Code.

(c) Rules of court of this State and of the United States.

(2) Judicial notice shall be taken without request by a party of such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute.

[~~(2)~~] (3) Judicial notice may be taken without request by a party [~~,~~] of the following matters to the extent that they are not embraced within subdivision (1) or (2):

(a) Resolutions and private acts [~~and resolutions~~] of the Congress of the United States and of the legislature of [~~this~~] any state, territory, or possession of the United States. [~~and duly enacted~~]

(b) [~~Ordinances and duly published regulations~~] Legislative enactments of governmental subdivisions or agencies of [~~this~~] (i) the United States and (ii) any state, territory, or possession of the United States. [~~and~~]

(c) Official acts of the legislative, executive, and judicial departments of this State and of the United States. [~~and~~]

(d) Records of the court in which the action or proceeding is pending or of any other court of this State or of the United States.

(e) Regulations of governmental subdivisions or agencies of (i) the United States and (ii) any state, territory, or possession of the United States.

(f) [~~(b)~~] The [~~laws~~] law of foreign countries [,] and governmental subdivisions of foreign countries.

[~~(c)~~] (g) [~~such facts as are so generally known or of such common notoriety~~] Specific facts and propositions which are matters of common knowledge not reasonably subject to dispute within the territorial jurisdiction of the court [~~that they cannot reasonably be the subject of dispute, and (d)~~].

(h) Specific facts and propositions [~~of generalized knowledge~~] not reasonably subject to dispute which are capable of immediate and accurate determination by resort to [~~easily accessible~~] sources of reasonably indisputable accuracy.

[~~(3)~~] (4) Judicial notice shall be taken of each matter specified in [~~paragraph (2) of this rule~~] subdivision (3) if a party requests it and:

(a) Furnishes the judge sufficient information to enable him properly to comply with the request; and

(b) Has given each adverse party such notice of the request through the pleadings or otherwise as will [~~as the judge may require to~~] enable [~~the~~] such adverse party to prepare to meet the request.

(5) Judicial notice may not be taken of any matter unless authorized or required by statute.

COMMENT

Revised Rule 9 Generally

The judge is required to take judicial notice of the matters listed in subdivisions (1) and (2), even though no request is made to do so. He may take judicial notice of the matters listed in subdivision (3), even when not requested to do so, and is required to notice them if a party requests it and satisfies the requirements of subdivision (4).

It should be noted that there is some overlap between the matters listed in the mandatory notice provisions of subdivisions (1) and (2) and the matters listed in the permissive-unless-a-request-is-made-provisions of subdivision (3). But when a matter falls within subdivision (1) or (2), notice is mandatory even though the matter would also fall within subdivision (3). Thus, public statutory law is required to be noticed under subdivision (1)(a) even though it would also be included under official acts of the legislative department under subdivision (3)(c). And certain regulations are required to be noticed under subdivision (1)(b) even though they might also be included under subdivision (3)(b), (c), and (e). Indisputable matters of universal knowledge are required to be noticed under subdivision (2) even though such matters might be included under subdivision (3)(g) and (h).

There is also some overlap between the various categories listed in subdivision (3). This overlap will cause no difficulty because all matters listed in subdivision (3) are treated the same.

Subdivision (1)

Judicial notice of the matters specified in subdivision (1) is mandatory, whether or not the judge is requested to notice them. The matters specified in this subdivision are all matters that, broadly speaking, can be considered as a part of the "law" applicable to the particular case. The judge can reasonably be expected to discover and apply this law, even if the parties fail to provide him with references to the pertinent cases, statutes, and regulations. Other matters that also may properly be considered as a part of the law applicable to the case (such as the law of foreign countries, certain regulations, and ordinances) are included under subdivision (3), rather than subdivision (1), primarily because of the difficulty of ascertaining such matters.

Although the judge errs if he fails to take judicial notice of the matters specified in subdivision (1), such error is not necessarily reversible error. Depending upon the circumstances, the appellate court may or may not invoke and apply the doctrine that the error which the appellant has "invited" is not reversible error, or the appellate court may apply the doctrine that points not urged in the trial court may not be advanced on appeal. These and similar principles are not abrogated by subdivision (1).

Listed below are the matters that are included under subdivision (1).

California and Federal Law. The decisional, constitutional, and public statutory law of California and of the United States must be judicially noticed under subdivision (1)(a). This requirement states existing law as found in subdivision (3) of Section 1875 of the Code of Civil Procedure.

Law of Sister States. The decisional, constitutional, and public statutory law in force in sister states must be judicially noticed under subdivision (1)(a). Courts now take judicial notice of the law of sister states under subdivision (3) of Section 1875 of the Code of Civil Procedure. However, the revised rule requires notice of relevant decisions of all sister-state courts, whereas Section 1875 seems to preclude notice of interpretation of sister-state law by intermediate-appellate and trial sister-state courts. The existing law is not clear as to whether a request for judicial notice of sister-state law is required and whether judicial notice is mandatory. On necessity for request for judicial notice see 24 Calif. L. Rev. 311, 316 (1936). On whether judicial notice is mandatory see In re Bartages, 44 Cal.2d 241 (1955) and opinion of Supreme Court in denying a hearing in Estate of Moore, 7 Cal. App.2d 722, 726 (1935).

Law of Territories and Possessions of the United States. The decisional, constitutional, and public statutory law in force in the territories and possessions of the United States must be judicially noticed under subdivision (1)(a). It is not clear under existing California law whether this law is treated as sister-state law or foreign law. See Witkin, California Evidence 60 (1958).

Regulations of California and Federal Agencies. Judicial notice must be taken under subdivision (1)(b) of the rules, regulations, orders, and standards of general application adopted by California state agencies and

filed with the Secretary of State or printed in the California Administrative Code or the California Administrative Register. This is existing California law as found in Government Code Sections 11383 and 11384. Notice must also be taken under subdivision (1)(b) of the rules and amendments of the State Personnel Board. This is existing California law under Government Code Section 18576.

Judicial notice also must be taken under subdivision (1)(b) of the contents of the Federal Register. This will require California courts to judicially notice documents published in the Federal Register (such as (1) presidential proclamations and executive orders having general applicability and legal effect and (2) orders, regulations, rules, certificates, codes of fair competition, licenses, notices, and similar instruments, having general applicability and legal effect issued, prescribed or promulgated by federal agencies). There is no clear holding that this is existing California law. Although 44 U.S.C. Section 307 provides that the "contents of the Federal Register shall be judicially noticed," it is not clear that this requires notice by state courts. See Broadway Fed. Stc. Loan Assoc. v. Howard, 133 Cal. App.2d 382, 386, 285 P.2d 61(1955) (referring to federal statute). See also Note, 59 Harv. L. Rev. 1137, 1141 (1946)(doubt expressed that notice is required); Knowlton, Judicial Notice, 10 Rutgers L. Rev. 501, 504 (1956)("it would seem that this provision is binding upon the state courts"). Livermore v. Beal, 18 Cal. App.2d 535, 542-543 (1937), suggests that California courts are required to judicially notice pertinent federal official action; and California courts have judicially noticed the contents of various proclamations, orders and regulations of federal agencies. E.g., Pacific Solvents Co. v. Superior Court, 88 Cal. App.2d 953 (1948)(orders); People v. Mason, 72 Cal. App.2d 699, 706-707 (1946)(presidential and executive proclamations); Downer v. Grizzly Livestock & Land Co., 6 Cal. App.2d 39 (1935)(regulation). The revised rule will make the California law clear.

Rules of Court. Judicial notice of the rules of the courts of this State and of the federal courts is required under subdivision (1)(c). This may change existing California law, for a number of older cases indicate that our appellate courts do not take judicial notice of the rules of the lower courts. E.g., Warden v. Mendocino County, 32 Cal. 655 (1867); Cutter v. Caruthers, 48 Cal. 178 (1874); Gammon v. Earley & Thompson, 97 Cal. App. 452 (1929). However, these cases are inconsistent with the modern philosophy of judicial notice as indicated by the holding in Flores v. Arroyo, 56 Cal.2d 492, 496-497 (1961)(stating that judicial notice would be taken of records and proceedings of courts of this State and overruling cases to the contrary). Moreover, the rules of the California and United States courts are, or should be, familiar to the court or easily discoverable from materials readily available to the court. Since the same cannot be said of the rules of court of sister states and other jurisdictions, there is no provision in the revised rules requiring or permitting judicial notice of them.

Subdivision (2)

Subdivision (2) requires judicial notice without a request of indisputable facts and propositions universally known. "Universally known" does not mean that every man on the street has knowledge of such facts. A fact known among persons of reasonable and average intelligence and knowledge will satisfy the "universally known" requirement. Cf. People v. Rossetti, 107 Cal. App. 7, 12 (1930).

Subdivision (2) should be contrasted with paragraphs (g) and (h) of subdivision (3) which provide for judicial notice of indisputable facts and propositions that are matters of common knowledge or are capable of

immediate and accurate determination by resort to sources of reasonably indisputable accuracy. Paragraphs (g) and (h) permit notice of facts and propositions that are indisputable but are not "universally" known.

Judicial notice does not apply to facts merely because they are known to the judge to be indisputable. They must fulfill the requirements of subdivision (2) or subdivision (3)(g) or (h). If a judge happens to know a fact that is not widely enough known to be subject to judicial notice under Rule 9, he may not "notice" it.

It is clear under existing law that the judge may notice the matters specified in subdivision (2); it is doubtful, however, that he must notice them. See Varcoe v. Lee, 180 Cal. 338, 347 (1919)(dictum). Since subdivision (2) covers universally known facts, the parties ordinarily will expect the judge to take judicial notice of them; the judge should not be permitted to ignore such facts merely because the parties fail to make a formal request for judicial notice.

Subdivision (3)

Subdivision (3) includes both matters of law and fact. The judge may take judicial notice of these matters, even when not requested to do so; and the judge is required to notice them if a party requests it and satisfies the requirements of subdivision (4).

The matters of law included under subdivision (3) are ones which may neither be known to the judge nor easily discoverable by him because the sources of information are not readily available. However, if a party requests it and furnishes the judge with "sufficient information" for him to take judicial notice, the judge must do so if proper notice has been given to the adverse parties. Thus, judicial notice of these matters of law is mandatory only if counsel has adequately accepted his responsibility for informing the judge. If the judge is adequately informed as to the law applicable to the case, there is no reason why the simplified process of judicial notice should not be applied to all of it, including such law as ordinances and the law of foreign countries.

Although subdivision (3) extends judicial notice to some matters of law of which courts do not take judicial notice under existing law, the wider scope of judicial notice is balanced by the assurance that the matter need not be judicially noticed unless adequate information to support its truth is furnished to the judge and to other parties. In addition, the parties are entitled under Rule 10 to a reasonable opportunity to present information to the judge relevant to the propriety of taking judicial notice and to the tenor of the matter to be noticed.

Listed below are the matters that are included under subdivision (3).

Resolutions and Private Acts. Subdivision (3)(a) provides for judicial notice of the resolutions and private acts of the Congress of the United States and of the legislature of any state, territory, or possession of the United States.

The California law on this matter is unclear. Our courts would take notice of private statutes of this State and the United States under subdivision (3) of Section 1875 and probably would take judicial notice of resolutions of this State and the United States under the same subdivision. It is not clear whether such notice is compulsory. It may be that notice of a private act pleaded in a criminal action pursuant to Penal Code Section 963 is mandatory, whereas notice of the same private act pleaded in a civil action pursuant to Code of Civil Procedure Section 459 is discretionary.

Although no cases have been found, California courts probably would not take judicial notice of a resolution or private act of a sister state or territory or possession of the United States. Although Section 1875 is not the exclusive list of the matters that will be judicially noticed, the courts did not take judicial notice of a private statute prior to the enactment of Section 1875. Ellis v. Eastman, 32 Cal. 447 (1867).

Ordinances and Similar Legislative Enactments. Subdivision (3)(b) provides for judicial notice of the legislative enactments of governmental subdivisions or agencies of the United States and of any state, territory or possession of the United States. The words "legislative enactments" have been substituted for "ordinances" in the revised rule so that not only are ordinances included, but also any similar legislative enactment. Not all governmental subdivisions legislate by ordinance.

This subdivision would change existing California law. Under existing law, municipal courts may take judicial notice of ordinances in force within their jurisdiction. People v. Crittenden, 93 Cal. App.2d Supp. 871, 877 (1949); People v. Cowles, 142 Cal. App.2d Supp. 865 (1956).

And an ordinance pleaded in a criminal action pursuant to Penal Code Section 963 must be judicially noticed. On the other hand, neither the superior court nor a district court of appeal will take judicial notice of municipal or county ordinances. Los Angeles County v. Bartlett, 203 Cal. App.2d 523 (1962); Thompson v. Guyer-Hays, 207 Cal. App.2d 366 (1962); Becerra v. Hochberg, 193 Cal. App.2d 431 (1961). It seems safe to assume that ordinances of sister states and of territories and possessions of the United States would not be judicially noticed under existing law.

Official Acts of the Legislative, Executive and Judicial Departments. Paragraph (c) of subdivision (3) provides for judicial notice of the official acts of the legislative, executive, and judicial departments of this State and of the United States. This paragraph is not found in the URE, but it states existing law as found in subdivision (3) of Code of Civil Procedure Section 1875. Under this provision, our courts have taken judicial notice of a wide variety of administrative and executive acts, such as proceedings and reports of the House Committee on Un-American Activities and records of the State Board of Education and a county planning commission. See Witkin, California Evidence § 49 (1958) and supplement thereto.

Court Records. Paragraph (d) of subdivision (3) provides for judicial notice of the records of the court in which the action or proceeding is pending or of any other court of this State or of the United States. This paragraph is not found in the URE, but it states existing law. Flores v.

Arroyo, 56 Cal.2d 492 (1961). While the provisions of paragraph (c) are comprehensive enough to include court records, specific mention of these records is desirable in order to eliminate any uncertainty in the law on this point. See the Flores case, supra.

Regulations. Paragraph (e) provides for judicial notice of regulations of governmental subdivisions and agencies of the United States and of any state, territory, or possession of the United States. Notice of certain regulations of California and federal agencies is mandatory under subdivision (1)(b). Paragraph (e) provides for notice of California and federal regulations that are not included under subdivision (1)(b) and for notice of regulations of other states and of territories and possessions of the United States.

Both California and federal regulations have been judicially noticed under subdivision (3) of Code of Civil Procedure Section 1875. 18 Cal. Jur.2d 447-448. Although no cases have been found, it is unlikely that regulations of other states or of territories or possessions of the United States would be judicially noticed under existing law.

Law of Foreign Countries. Paragraph (f) of subdivision (3) provides for judicial notice of the law of foreign countries and governmental subdivisions of foreign countries. Paragraph (f) should be read in connection with Rule 10.5 and paragraph (b) of subdivision (2) of Rule 10. These provisions retain the substance of our existing law which was enacted in 1957 upon recommendation of the California Law Revision Commission. See 3 Cal. Law Revision Comm'n, Rep., Rec. & Studies, Recommendation and Study at I-1 (1957).

Paragraph (f) refers to "the law" of foreign countries and governmental subdivisions of foreign countries. This makes all law, in whatever form,

subject to judicial notice. Since the law of a foreign country may take a number of unanticipated forms, it is best not to limit this paragraph by a definition of "law."

Matters of "Common Knowledge" and Verifiable Facts. Paragraph (g) of subdivision (3) provides for judicial notice of matters of common knowledge within the court's jurisdiction that are not subject to dispute. This paragraph states existing California case law. 18 Cal. Jur.2d 439-440. The California courts have taken judicial notice of a wide variety of matters of common knowledge. Witkin, California Evidence 65-68 (1958).

Paragraph (h) of subdivision (3) provides for judicial notice of indisputable facts immediately ascertainable by reference to sources of reasonably indisputable accuracy. In other words, the facts need not be actually known if they are readily ascertainable and indisputable. Sources of "reasonably indisputable accuracy" include not only treatises, encyclopedias, almanacs, and the like, but also persons learned in the subject matter. This would not mean that reference works would be received in evidence or sent to the jury room. Their use would be limited to consultation by the judge and the parties for the purposes of determining whether or not to take judicial notice and to determine the tenor of the matter to be noticed.

Paragraphs (g) and (h) include, for example, facts which are accepted as established by experts and specialists in the natural, physical and social sciences if those facts are of such wide acceptance that to submit them to the jury would be to risk irrational findings. The paragraphs include such matters listed in Code of Civil Procedure Section 1875 as the "geographical divisions and political history of the world" and "the true significance of all English words and phrases." To the extent that paragraphs (g) and (h) overlap with subdivision (2), notice is, of course, mandatory under subdivision (2).

The matters covered by paragraphs (g) and (h) are included in subdivision (3)--rather than subdivision (2)--because it seems reasonable to put the burden on the parties to bring adequate information before the judge if judicial notice is to be mandatory. See subdivision (4) and comment relating thereto.

Under existing California law, the courts take judicial notice of the matters that are included under paragraphs (g) and (h), either pursuant to Section 1875 of the Code of Civil Procedure or because such matters are matters of common knowledge and are certain and indisputable. Witkin, California Evidence 65-68 (1958). Notice of these matters is probably not compulsory under existing law.

Subdivision (4)

This subdivision provides that the matters specified in subdivision (3) must be judicially noticed by the judge if a party (a) requests it, (b) provides the judge with sufficient information, and (c) gives the adverse parties such notice of the request as is specified in the subdivision.

The substance of the URE notice requirement has been retained, but it has been rephrased so that the judge is not required to make an initial determination as to the time and form of notice in each case. Under the revised rule, the person requesting judicial notice must give each adverse party such notice through the pleadings or otherwise as will enable him to prepare to meet the request. In cases where the notice given does not satisfy this requirement, the judge may decline to take judicial notice. A somewhat similar notice to the adverse parties is required under subdivision (4) of Section 1875 when a request for judicial notice of the law of foreign countries is made. Subdivision (4) of Rule 9 broadens this existing requirement to cover all matters specified in subdivision (3) of Rule 9.

The notice requirement is an important one, since under Rule 11 judicial notice is binding on the jury. Accordingly, in cases where a question arises as to whether judicial notice should be taken or as to the tenor of the matter to be noticed, the adverse parties should be given ample notice and opportunity to oppose the taking of judicial notice or to present information relevant to the tenor of the matter to be noticed.

On the other hand, since subdivision (3) relates to a wide variety of facts and law, the notice requirement should be administered with flexibility in order to insure that the policy behind the judicial notice rules is properly implemented. In many cases it will be reasonable to expect

notice to be given at or before the time of the pretrial conference. In other cases, certain facts or law of which the judge should take judicial notice may come up at trial. Subdivision (4) merely requires reasonable notice, and the reasonableness of the notice given will depend upon the circumstances of the particular case. Moreover, subdivision (3) provides that notice may be taken of all facts and law included therein without request by a party. Thus, the judge is authorized to take judicial notice even if notice has not been given to the adverse parties. He should not refuse to take judicial notice by virtue of a strict interpretation of the notice requirement which is intended as a safeguard and not as a rigid bar; but, whenever the judge takes judicial notice under subdivision (3), the party adversely affected should be given a reasonable opportunity to present information as to the propriety of taking judicial notice and as to the tenor of the matter to be noticed (Rule 10).

What will be "sufficient information" to enable a judge "properly to comply with"a request to judicially notice a matter specified in subdivision (3) will depend on each case. Rule 10(2) provides that the judge may consult and use any source of pertinent information and is not bound by the exclusionary rules of evidence, but subdivisions (3) and (4) of Rule 9 do not define what is "sufficient information." That will vary from case to case. While parties will understandably use the best evidence they can produce under the circumstances, mechanical requirements, ill-suited to the individual case, should be avoided. In particularly complicated cases, the judge might justifiably feel that expert testimony is needed to clarify especially difficult problems. In any event, subject to the provisions of Rule 10, he may consult experts and other sources not presented to him by the parties.

Subdivision (5)

This subdivision makes clear that judicial notice may not be taken of any matter unless authorized or required by statute. Judicial notice may not be taken of a matter unless it is listed in Rule 9 or in some other statute. By way of contrast, the principal judicial notice provision found in existing law--Code of Civil Procedure Section 1875--does not limit judicial notice to matters specified by statute; and judicial notice has been taken of various matter not so specified, the principal non-statutory matters subject to judicial notice being matters of common knowledge which are certain and indisputable.

Subdivision (5) should not be thought to prevent courts from considering whatever materials are appropriate in construing statutes, determining constitutional issues, and formulating rules of law. That a court may take note of legislative history, discussions by learned writers in treatises and law reviews, and similar materials is inherent in the requirement that it take notice of the law, for in many cases the meaning and validity of statutes, the precise nature of a common law rule, or the correct interpretation of a constitutional provision can be determined only with the help of such extrinsic aids. Cf. People v. Sterling Refining Co., 86 Cal. App. 558, 564 (1927)(statutory authority to notice "public and private acts" of legislature held to authorize examination of legislative history of certain acts). Rule 9 will neither broaden nor limit the extent to which

a court may resort to extrinsic aids in determining the rules of law it is required to note.

RULE 10. DETERMINATION AS TO PROPRIETY OF TAKING JUDICIAL NOTICE AND TENOR OF MATTER NOTICED

(1) Before determining whether to take judicial notice of any matter specified in subdivision (3) of Rule 9, the judge shall afford each party reasonable opportunity to present to him information relevant to the propriety of taking judicial notice of [a] the matter [~~or~~] ; and, before determining the tenor of any matter specified in subdivision (3) of Rule 9, the judge shall afford each party reasonable opportunity to present to him information relevant to the tenor of the matter to be noticed.

(2) In determining the propriety of taking judicial notice of a matter or the tenor thereof [,] :

(a) [~~the judge may consult and use~~] Any source of pertinent information, including the advice of persons learned in the subject matter, may be consulted or used, whether or not furnished by a party [~~, and~~]

(b) In cases falling within paragraph (f) of subdivision (3) of Rule 9, if the judge resorts to the advice of persons learned in the subject matter, such advice, if not received in open court, shall be in writing and made a part of the record in the action or proceeding.

[~~(b)~~] (c) No exclusionary rule except a valid claim of privilege shall apply.

[~~(3) If the information possessed by or readily available to the judge, whether or not furnished by the parties, fails to convince him that a matter falls clearly within Rule 9, or if it is insufficient to enable him to notice the matter judicially, he shall decline to take judicial notice thereof.~~]

[~~(4) In any event the determination either by judicial notice or from evidence of the applicability and the tenor of any matter of common law, constitutional law, or of any statute, private act, resolution, ordinance or regulation falling within Rule 9, shall be a matter for the judge and not for the jury.~~]

COMMENT

Subdivision (1). This subdivision guarantees the parties a reasonable opportunity to present information to the judge as to the propriety of taking judicial notice and as to the tenor of the matter to be noticed. The URE provision has been revised to limit its application to matters specified in subdivision (3) of Revised Rule 9, for it would not be practicable to make Rule 10(1) applicable to subdivisions(1) and (2) of Revised Rule 9.

What constitutes a "reasonable opportunity to present information" will depend on the importance of the matter to the case and the complexity of the matter. For example, in a case where there is no dispute as to the existence and validity of a city ordinance, no formal hearing would be necessary to determine the propriety of taking judicial notice of the ordinance and of its tenor. But where there is a complex question as to the tenor of the law of a foreign country applicable to the case, the granting of a hearing under subdivision (1) would be mandatory. The New York courts have so construed their judicial notice statute, saying that an opportunity for a litigant to know what the deciding tribunal is considering and to be heard with respect to it is guaranteed by due process of law. Arams v. Arams, 182 Misc. 328, 182 Misc. 336, 45 N.Y.S.2d 251 (Sup. Ct. 1943).

Subdivision (2). Since one of the purposes of judicial notice is to simplify the process of proof-making, the judge should be given considerable latitude in deciding what sources are trustworthy. This subdivision permits the judge to use any source of pertinent information, including the advice of persons learned in the subject matter. As revised, it probably

restates existing law as found in Section 1875 of the Code of Civil Procedure. See Research Study, pp. 24-26.

If the judge resorts to the advice of experts to assist him in determining the law of a foreign country, subdivision (2) requires that such advice, if not received in open court, be in writing and made a part of the record. This requirement is based on a similar requirement found in Section 1875. Because foreign law may be based on concepts alien to our judicial system, the extra-judicial advice used by the judge in taking judicial notice of foreign law should be made a matter of record so that it will be available for examination by the parties and by the reviewing court on appeal.

Subdivision (3). This subdivision has been deleted. To the extent it merely repeats the principle of sufficiency set forth in Revised Rule 9(4), subdivision (3) is unnecessary duplication. To the extent that it makes Rule 9 an exclusive list of matters that may be judicially noticed, it is unnecessary since that principle has been more clearly stated in subdivision (5) of Revised Rule 9.

Subdivision (4). This subdivision has been deleted as superfluous. The principle is well established that matters of law are for the judge, not for the jury; and under Rule 11 any matter judicially noticed which would otherwise have been for determination by the jury must be accepted as a fact by the jury.

RULE 10.5. PROCEDURE WHEN JUDGE UNABLE TO DETERMINE WHAT FOREIGN LAW IS.

If the judge is unable to determine what the law of a foreign country or a governmental subdivision of a foreign country is, he may, as the ends of justice require, either (a) apply the law of this State if he can do so consistently with the Constitution of this State and of the United States or (b) dismiss the action or proceeding without prejudice.

COMMENT

This rule restates existing California law as found in the last sentence of Code of Civil Procedure Section 1875. The rule continues in effect statutory language enacted in 1957 upon recommendation of the California Law Revision Commission. See 3 Cal. Law Revision Comm'n, Rep., Rec. & Studies, Recommendation at I-6 (1957).

RULE 11. ~~[Instructing the Trier of Fact as to Matter Judicially Noticed.]~~

NOTING FOR RECORD MATTER JUDICIALLY NOTICED; INSTRUCTING JURY.

(1) If a matter judicially noticed is other than ~~[the common law or constitution or public statutes of this state]~~ one specified in subdivision (1) of Rule 9, the judge shall at the earliest practicable time indicate for the record the matter which is judicially noticed and the tenor thereof.

(2) If ~~[the]~~ a matter judicially noticed is one which would otherwise have been for determination by ~~[a trier of fact other than the judge, he]~~ the jury, the judge may and upon request shall instruct the ~~[trier of the fact]~~ jury to accept as a fact the matter so noticed.

COMMENT

Subdivision (1). This subdivision requires that the judge at the earliest practicable time indicate for the record a matter which is judicially noted. However, matters of law judicially noticed under subdivision (1) of Rule 9 are not included within this requirement. The requirement is imposed in order to provide the parties with an adequate opportunity to try their case in view of the fact noticed. In addition, needless dispute sometimes results from the failure of the judge to put in the record matters which he has judicially noticed. No comparable requirement is found in existing California law.

Subdivision (2). This subdivision makes matters judicially noticed binding on the jury. It makes clear that there is no right to introduce evidence disputing the fact as noticed by the judge. The subdivision is limited to instruction on a matter that would otherwise have been for determination by the jury; instruction

of juries on matters of law is not a matter of evidence and is covered by the general provisions of law governing instruction of juries. Subdivision (2) states the substance of the existing law as found in Code of Civil Procedure Section 2102. See People v. Mayes, 113 Cal. 618, 624-625 (1896).

Under subdivision (2), the judge need not instruct the jury unless requested. This revision of the URE rule is intended to avoid time consuming and unnecessary instructions.

RULE 12. JUDICIAL NOTICE IN PROCEEDINGS SUBSEQUENT TO TRIAL.

(1) The failure or refusal of the judge to take judicial notice of a matter, or to instruct the [~~trier of fact~~] jury with respect to the matter, [~~shall~~] does not preclude the judge from taking judicial notice of the matter in subsequent proceedings in the action.

[~~(2) The rulings of the judge under Rules 9, 10 and 11 are subject to review.~~]

[~~(3) The reviewing court in its discretion may take judicial notice of any matter specified in Rule 9 whether or not judicially noticed by the judge.~~]

(2) The reviewing court shall judicially notice, in the manner provided by subdivision (2) of Rule 10, any matter specified in Rule 9 that the judge was obliged to notice. In other cases, the reviewing court may notice matters specified in Rule 9 in its discretion and has the same powers as the judge under Rule 10.5.

[~~(4)~~] (3) Before taking judicial notice under this rule of a matter specified in subdivision (3) of Rule 9, the [A] judge or [a] reviewing court taking judicial notice [~~under Paragraph (1) or (3) of this rule~~] of a matter not theretofore so noticed in the action or proceeding shall afford the parties reasonable opportunity to present information relevant to the propriety of taking such judicial notice and to the tenor of the matter to be noticed.

COMMENT

Rule 12 sets forth a separate set of rules for the taking of judicial notice in proceedings subsequent to trial and in appellate proceedings.

Subdivision (1). This subdivision provides that the failure or even the refusal of a judge to take judicial notice of a matter at the trial does not bar the trial judge, or another trial judge, from taking judicial notice of that matter in a subsequent proceeding, such as a motion for a new trial or the like. Although no California cases have been found, it seems safe to assume that the trial judge has the power to take judicial notice of a matter in subsequent proceedings, since the appellate court can properly take judicial notice of any matter of which the trial court could properly take judicial notice. See People v. Tossetti, 107 Cal. App. 7, 12 (1930).

Subdivision (2). Subdivision (2) of the revised rule requires that a reviewing court take judicial notice of any matter which the trial judge was obliged to notice. This means that the matters specified in subdivisions (1) and (2) of Rule 9 must be judicially noticed by the reviewing court even though the trial court did not take judicial notice of such matters. The matters specified in subdivision (3) of Rule 9 must also be judicially noted by the reviewing court if an appropriate request was made at the trial level. See Rule 9(4).

Having taken judicial notice of such a matter, the reviewing court may or may not apply it in the particular case on appeal.

The effect to be given to matters judicially noticed on appeal, where the question has not been raised below, depends on factors that are not evidentiary in character and are not mentioned in these rules. For example, the appellate court is required to notice the matters of law mentioned in Rule 9(1); but it may apply the doctrine that an error which the appellant has "invited" is not reversible error, or the doctrine that points not urged in the trial court may not be advanced on appeal, and refuse to apply the law to the pending case. But these principles do not mean that the appellate court does not take judicial notice of the applicable law; they merely mean that for reasons of policy governing appellate review, the appellate court may refuse to apply the law to the case before it.

Subdivision (3). Subdivision (3) of the revised rule provides the parties with the same procedural protection when judicial notice is taken in proceedings subsequent to trial as is provided by subdivision (1) of Revised Rule 10.

Deleted Provisions of URE Rule. Subdivision (2) of the URE rule has been deleted as unnecessary. The principle of this subdivision is well established by existing case law. See extensive annotations to Code of Civil Procedure Section 1875 in West's Anno. Calif. Codes and Deering's Anno. Calif. Codes. No comparable provision in included in existing law or in other URE rules.

Subdivision (3) of the URE rules also has been deleted. This subdivision is superseded by subdivision (2) of the revised rule.

AMENDMENTS AND REPEALS OF EXISTING STATUTES

Set forth below is a list of existing statutes relating to judicial notice that should be revised or repealed in light of the Commission's tentative recommendation concerning Article II (Judicial Notice) of the Uniform Rules of Evidence. The reason for the suggested revision or repeal is given after each section. References in such reasons to the Uniform Rules of Evidence are to the Uniform Rules as revised by the Commission.

Civil Code

Section 53 should be revised to read:

> 53. (a) Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of such real property to any person of a specified race, color, religion, ancestry, or national origin, is void and every restriction or prohibition as to the use or occupation of real property because of the user's or occupier's race, color, religion, ancestry, or national origin is void.
>
> (b) Every restriction or prohibition, whether by way of covenant, condition upon use or occupation, or upon transfer of title to real property, which restriction or prohibition directly or indirectly limits the acquisition, use or occupation of such property because of the acquirer's, user's, or occupier's race, color, religion, ancestry, or national origin is void.
>
> (c) In any action to declare that a restriction or prohibition specified in subdivision (a) or (b) of this section is void, the court [~~may take~~] takes judicial notice of the recorded instrument or instruments containing such prohibitions or restrictions in the same manner that it takes judicial notice of the matters listed in subdivision (3) of Rule 9 of the Revised Uniform Rules of Evidence.

This revision makes the procedure provided in Rules 9-12 applicable when judicial notice is taken of a matter specified in subdivision (c) of Section 53.

Code of Civil Procedure

Section 433 should be revised to read:

> 433. When any of the matter enumerated in Section 430 do not appear upon the face of the complaint, the objection may be taken by answer; except that when the ground of demurrer is that there is another action or proceeding pending between the same parties for the same cause [,] and the court may take judicial notice of [~~other actions~~

~~and-proceedings-pending-in-the-same-court,-or-in-other-courts-of-the State,-and-for-this-purpose-only~~] the other action or proceeding under Article II of the Revised Uniform Rules of Evidence, an affidavit may be filed with the demurrer [~~to-establish~~] for the sole purpose of establishing such fact or [~~invoke~~] invoking such notice.

This revision is necessary to conform Section 433 to Rule 9(3)(d) and Rule 9(4).

Section 1827 should be revised to read:

1827. FOUR KINDS OF EVIDENCE SPECIFIED. There are four kinds of evidence:

1. [~~The-knowledge-of~~] Matters judicially noticed by the Court;
2. The testimony of witnesses;
3. Writings;
4. Other material objects presented to the senses.

This revision is necessary to conform Section 1827 to the language used in the revised URE article on judicial notice.

Section 1875 provides:

1875. JUDICIAL NOTICE. Courts take judicial notice of the following:

1. The true signification of all English words and phrases, and of all legal expressions;
2. Whatever is established by law;
3. Public and private official acts of the legislative, executive and judicial departments of this State and of the United States, and the laws of the several states of the United States and the interpretation thereof by the highest courts of appellate jurisdiction of such states;
4. The law and statutes of foreign countries and of political subdivisions of foreign countries; provided, however, that to enable a party to ask that judicial notice thereof be taken, reasonable notice shall be given to the other parties to the action in the pleadings or otherwise;
5. The seals of all the courts of this State and of the United States;
6. The accession to office and the official signatures and seals of office of the principal officers of government in the legislative, executive, and judicial departments of this State and of the United States;
7. The existence, title, national flag, and seal of every state or sovereign recognized by the executive power of the United States;
8. The seals of courts of admiralty and maritime jurisdiction, and of notaries public;

9. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

In all these cases the court may resort to its aid to appropriate books or documents of reference. In cases arising under subdivision 4 of this section, the court may also resort to the advice of persons learned in the subject matter, which advice, if not received in open court, shall be in writing and made a part of the record in the action or proceeding.

If a court is unable to determine what the law of a foreign county or a political subdivision of a foreign county is, the court may, as the ends of justice require, either apply the law of this State if it can do so consistently with the Constitutions of this State and of the United States or dismiss the action without prejudice.

This section should be repealed. Each portion of this section is superseded by the portion of the URE indicated below.

Section 1875	URE
Portion of subdivision (1) relating to "true signification of all English words and phrases"	Superseded by paragraphs (g) and (h) of subdivision (3) of Rule 9
Portion of subdivision (1) relating to "legal expressions" and all of subdivision (2)	Superseded by subdivision (1) of Rule 9 and paragraphs (a), (b), (c), (d), (e), and (f) of subdivision (3) of Rule 9
Subdivision (3)	Superseded by subdivision (1) and subdivision (3) (a), (c), and (d) of Rule 9
Subdivision (4)	Superseded by subdivision (3) (f) and subdivision (4) of Rule 9
Subdivision (5)	Superseded by the Tentative Recommendation on Authentication and Content of Writings
Subdivisions (6) and (7)	The portions relating to official signatures and seals are superseded by the Tentative Recommendation on Authentication and Content of Writings. Balance is superseded by paragraphs (g) and (h) of subdivision (3) of Rule 9
Subdivision (8)	Superseded by the Tentative Recommendation relating to Authentication and Content of Writings

Section 1875	URE
Subdivision (9)	Superseded by subdivision (2) and paragraphs (g) and (h) of subdivision (3) of Rule 9
Penultimate paragraph	Superseded by subdivision (2) of Rule 10
Last paragraph	Superseded by Rule 10.5

Section 2102 should be revised to read:

2102. QUESTIONS OF LAW ADDRESSED TO THE COURT
All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it. [~~Whenever the knowledge of the court is, by this code, made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.~~]

The deleted portion of Section 2102 is superseded by subdivision (2) of Rule 11.

Corporations Code

Section 6602 should be revised to read:

6602. In any action or proceeding, the court [~~shall take~~] takes judicial notice [~~without proof in court of the Constitution and statutes applying to foreign corporations, and any interpretation thereof, the seals of State and state officials and notaries public, and~~], in the same manner that it takes judicial notice of the matters listed in subdivision (3) of Rule 9 of the Revised Uniform Rules of Evidence, of the official acts affecting corporations of the legislative, executive, and judicial departments of the State or place under the laws of which the corporation purports to be incorporated.

This revision makes the procedure provided in Rules 9-12 applicable to the matters listed in Section 6602. The portion of Section 6602 which has been deleted is unnecessary because it duplicates the provisions of Rule 9.

Government Code

Section 34330 provides:

34330. Courts shall take judicial notice of the organization and existence of cities incorporated pursuant to this chapter.

This section should be repealed. It is superseded by Rule 9(3) and (4).

Penal Code

Section 961 should be revised to read:

> 961. Neither presumptions of law, nor matters of which judicial notice is authorized or required to be taken, need be stated in an accusatory pleading.

This revision makes clear that matters that will be judicially noticed, whether such notice is mandatory or discretionary, need not be stated in an accusatory pleading.

Section 963 should be revised to read:

> 963. In pleading a private statute, or an ordinance of a county or a municipal corporation, or a right derived therefrom, it is sufficient to refer to the statute or ordinance by its title and the day of its passage, and the court must thereupon take judicial notice thereof in the same manner that it takes judicial notice of matters listed in subdivision (3) of Rule 9 of the Revised Uniform Rules of Evidence.

This revision makes the procedure provided in Rules 9-12 applicable when judicial notice is taken of a matter listed in Section 963. Note that, notwithstanding Rule 9(4), notice is mandatory if the private statute or ordinance is pleaded by reference to its title and the day of its passage.