STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION AND STUDY

relating to

Judicial Notice of the Law of Foreign Countries

February 1, 1957

LETTER OF TRANSMITTAL

To His Excellency Goodwin J. Knight
Governor of California
and to the Members of the Legislature

The California Law Revision Commission was authorized by Resolution Chapter 207 of the Statutes of 1955 to make a study to determine whether the courts of this State should be authorized or required to take judicial notice of the law of foreign countries. The commission herewith submits its recommendation relating to this subject and the study prepared by its research consultant, Professor Edward A. Hogan, Jr., of the Hastings College of Law, San Francisco.

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February 1, 1957

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RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to Judicial Notice of the Law of Foreign Countries

Since 1927 the courts of this State have taken judicial notice of the law of sister states under Section 1875(3) of the Code of Civil Procedure. However, they are not authorized to judicially notice the law of foreign countries and that law is treated as a matter of fact, to be pleaded and proved as any other fact. Thus, it is potentially a jury question and a finding with respect to such law is binding on an appellate court if supported by substantial evidence. The latter rule has, in at least one instance, led to affirmance on appeal of divergent trial court findings as to the law of a particular foreign country. In the absence of proof of foreign country law the courts of this State do not dismiss the action; rather, they presume that the foreign law is the same as that of California, whether decisional or statutory.

When these rules were adopted by common law courts, including those of this State, they were justified because of the inadequate libraries and means of communication then available to most courts and litigants. However, the commission believes that these rules are now outmoded and it recommends that the Legislature amend Section 1875 of the Code of Civil Procedure to bring the law of foreign countries within the purview of judicial notice.

Making foreign country law a subject of judicial notice will, under accepted principles, have several procedural consequences. Foreign country law will become a matter to be decided by the trial court rather than the jury. The trial court's determination will be reviewable on appeal as a question of law rather than a question of fact; thus, the appellate court will be free to make an independent determination of what the foreign country law is. The courts will be able to consult a wide variety of sources of information in determining foreign country law and this information will not have to be formally introduced into evidence. These principles apply generally to matters judicially noticed and the commission does not believe that it is necessary to enact statutes making them particularly applicable to foreign country law even though this has been done in some jurisdictions.

If the Legislature determines that foreign country law should be judicially noticed, the commission recommends that the legislation enacted for this purpose cover the following matters:

1. A party intending to rely upon the law of a foreign country should be required to give reasonable notice thereof to the other parties to the action. Such a requirement, while avoiding the rigidity and formalism of the present rule that foreign country law must be alleged in the pleadings, will assure that no litigant will be taken by surprise by the application of the law of a foreign country. The difficulty in

many cases of obtaining information relating to foreign country law justifies a special notice requirement in such cases.

2. Provision should be made concerning what a court shall do when, in a case in which foreign law is applicable, the court is unable to determine what the foreign country law is. As is shown in the research consultant's report, it has been the experience of those states which now provide for judicial notice of foreign country law that this not infrequently happens. One course of action in such a case would be to dismiss the action on the ground that the court is unable to decide it under the applicable law. Another would be to presume that the foreign country law is the same as the law of California, whether decisional or statutory. This is what our courts do today. The commission believes that neither of these approaches is satisfactory; the first because it may deprive a deserving party of a day in court through no fault of his own and the second because there is simply no basis in fact for the presumption that foreign country law is identical to our own. The commission recommends, therefore, that Section 1875 of the Code of Civil Procedure be amended to authorize a court, when it is unable to determine what the law of a foreign country is, to take one of two courses of action, as the ends of justice require in the circumstances of the particular case:

(a) The court should be authorized to decide the case under California law if there is a sufficient connection between this State and the parties or transactions involved to permit application of California law consistently with the due process clauses of the Constitutions of this State and of the United States. This will produce the same result as the use of a presumption that the law of the foreign country is the same as our own but without employing the patent fiction upon which the presumption is based and with an exception for cases in which such a course would be unconstitutional.

(b) The court should be authorized to dismiss the action without prejudice if it concludes that the case either can or should be decided only under the foreign country law.

3. Sections 1900 and 1902 of the Code of Civil Procedure should be repealed and Section 1901 of that code should be amended to omit the reference therein to the law of other states and countries. These sections provide for methods of proving the law of other states and countries. They were enacted as a part of the original Code of Civil Procedure of 1872 at a time when the law of both sister states and foreign countries was required to be formally pleaded and proved. They have served no purpose insofar as sister state law is concerned since 1927 when Section 1875(3) was enacted authorizing our courts to judicially notice such law. If Section 1875 is amended to authorize judicial notice of foreign country law, these sections will have no further purpose to serve insofar as proof of law is concerned and their continuation in the Code of Civil Procedure can only serve to cause confusion concerning the effect of Section 1875. Sections 1900 and 1902 should, therefore, be repealed. However, Section 1901 should only be amended to delete the reference therein to the law of other states and countries since this section also provides for proof of certain public writings.

4. Section 1875, which provides that in all cases where judicial notice is employed a court may resort for its aid to appropriate books or docu-

ments of reference, should be amended to authorize the courts to resort also to the advice of persons learned in the subject matter when judicial notice is taken of foreign country law. Thus, the commission recommends that our courts be authorized to hear oral discussion of foreign country law in open court by persons familiar with such law. It is also recommended that the courts be authorized to receive communications relating to such law in chambers but that in such cases the communication should be required to be in writing and to be made a part of the record in the action or proceeding.

5. The word "facts" should be eliminated from the first line of Section 1875 ("Courts take judicial notice of the following facts") to obviate the possibility that it might be construed to make questions of sister state law under subdivision 3 and foreign country law under subdivision 4 questions of fact rather than questions of law.

6. Section 259.1 of the Probate Code, which provides that a nonresident alien seeking to inherit property in California has the burden of establishing the "fact of" the existence of a reciprocal right of inheritance by United States citizens in his country, should be revised to eliminate the quoted words from the section. These words imply that the foreign country law with which the section is concerned is a "fact," thus suggesting what our courts have held—that such law must be formally pleaded and proved and that a trial court finding concerning it must be affirmed on appeal if supported by substantial evidence. If Section 1875 of the Code of Civil Procedure is revised to bring foreign country law within the purview of judicial notice, the section will apply to cases arising under Section 259.1 of the Probate Code. Continuation of the words "fact of" in the section might, however, lead to confusion on this point. Providing for judicial notice of foreign country law will not, of course, infringe upon the policy of Section 259.1. The burden of establishing the existence of reciprocal rights will still be upon the nonresident alien. He will simply be able to make out his case in the same way as will any other litigant whose case depends upon a showing of what the law of a foreign country is. He will also be entitled, along with other litigants, to have the question decided by the judge rather than the jury in the trial court and to have a *de novo* determination on appeal as to whether the reciprocal rights upon which his claim depends exist. But if he is unable to sustain the burden imposed by Section 259.1 and convince the courts of this State that United States citizens can inherit property in his country, he will not be permitted to inherit property in this State.

The commission's recommendation would be effectuated by the enactment of the following measure: *

An act to amend Sections 1875 and 1901 of the Code of Civil Procedure and Section 259.1 of the Probate Code, and to repeal Sections 1900 and 1902 of the Code of Civil Procedure, relating to judicial notice of law.

* Matter in italics would be added to the present law; matter in "strikeout" type would be omitted.

The people of the State of California do enact as follows:

SECTION 1. Section 1875 of the Code of Civil Procedure is amended to read:

1875. Courts take judicial notice of the following ~~facts~~ :

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;

~~4~~ *5*. The seals of all the courts of this state and of the United States;

~~5~~ *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;

~~6~~ *7*. The existence, title, national flag, and seal of every state or sovereign recognized by the executive power of the United States;

~~7~~ *8*. The seals of courts of admiralty and maritime jurisdiction, and of notaries public;

~~8~~ *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 for 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 country or a political subdivision of a foreign country 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 Constitution of this State and of the United States or dismiss the action without prejudice.

SEC. 2. Sections 1900 and 1902 of the Code of Civil Procedure are hereby repealed.

SEC. 3. Section 1901 of the Code of Civil Procedure is amended to read:

1901. A copy of ~~the written law or other~~ *a* public writing of any State or country, attested by the certificate of the officer having charge of the original, under the public seal of the State or country, is admissible as evidence of such ~~law or~~ writing.

SEC. 4. Section 259.1 of the Probate Code is amended to read:

259.1. The burden shall be upon such nonresident aliens to establish the ~~fact of~~ existence of the reciprocal rights set forth in Section 259.

A STUDY TO DETERMINE WHETHER CALIFORNIA COURTS SHOULD TAKE JUDICIAL NOTICE OF THE LAW OF FOREIGN COUNTRIES*

COMMON LAW BACKGROUND

The law of conflict of laws throws upon the courts of this country the burden of employing two systems of law for the solution of problems presented to them. One is the local law which is considered the appropriate law for the solution of cases which have no contacts outside the state. The other system of law is used within the same forum for the solution of legal problems which have contacts in more than one state or country. When the place in which a contract is made is not the same as the place in which it is to be performed, when a man is injured in a state other than the forum, when he marries at a place other than his domicile, when he dies leaving property located in more than one state, or whenever the transaction or the parties have substantial contacts with another jurisdiction, the forum may be required under the principles of conflict of laws to look to the law of the other jurisdiction for the proper solution of the problem.

In the days when communication was difficult and law libraries had few books of reference, English and American courts made no pretensions that they knew or had the means of finding out the law of other countries or states. Courts would not take judicial notice of foreign law but required that such law be pleaded and proved as a fact.[1] That fact was decided by the jury or the court in a nonjury case and the decision was binding on the appellate courts if supported by substantial evidence even though the appellate court would have reached a different conclusion from the evidence.

The requirement that foreign country law be pleaded and proved has been criticized on the ground that the rules as to what evidence is admissible to prove the foreign law frequently make it difficult and often make it impossible, as a practical matter, to establish that law. In California, evidence of foreign law must meet the requirements of Code of Civil Procedure Sections 1900 to 1902 before it is admissible. Under Section 1900 books printed or published under the authority of a foreign country and purporting to contain the statutes, code or other written law of such country, or proved to be commonly admitted in the tribunals of the country as evidence of its written law, are admissible as evidence of such law. Under Section 1901 only an authenticated copy of the law from an official custodian of the records may be used, and under Section 1902 the unwritten law may be proved by the oral testimony of one skilled in that law.[2]

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* This study was made at the direction of the Law Revision Commission by Professor Edward A. Hogan, Jr. of the Hastings College of Law, San Francisco.

[1] 3 BEALE, CONFLICT OF LAWS §§ 621.1-621.5 (1935).

[2] The expert witness need not be a lawyer, nor is it absolutely necessary that he have been a resident of the country involved. Estate of Faber, 168 Cal. 491, 143 Pac. 737 (1914); Estate of Johnson, 100 Cal. App.2d 73, 223 P.2d 105 (1950).

Although these provisions of the Code of Civil Procedure are intended to help bring proof of foreign country law before a California court, litigants have sometimes not been able to establish the information needed, particularly when proof is required as to the law of a country located behind the iron or bamboo curtain. For example, in *Birch* v. *Birch* [3] the plaintiff, who was seeking an annulment of his purported marriage, needed to establish the law of China on the subject of the validation of a church divorce by civil authority. He offered textbooks on Chinese law but these were written in French and did not meet the test of Section 1900. The certificate of the Consul General of China as to the existing and pertinent sections of the Civil Code of China was rejected since he is not an official custodian of records; and the observation of the appellate court that expert testimony could be used meant little to the litigant who was not able to produce an expert witness.

The expense and difficulty of producing an expert witness at the ordinary county seat are great. Moreover, cross-examination of an expert may become meaningless when foreign language and foreign law concepts are being clarified for a jury. Professor McCormick, an authority in the field of evidence, in commenting on the problems involved in the use of oral testimony by experts in foreign law, has said:

> This method of proof seems to maximize expense and delay and hardly seems best calculated to ensure a correct decision by our judges on questions of foreign law. It could be vastly improved by pretrial conferences (as provided, for example, by Rule 12, Federal Rules of Civil Procedure) in which agreements as to undisputed aspects of the foreign law could be secured, and by the appointment by the court of one or more experts on foreign law as referees or as court chosen experts to report their findings to the court. In any event the adoption by the federal courts and by the states which have not yet adopted it, of the flexible procedure of judicial notice, whereby the court is free to get its own information from any convenient source, seems the path of justice and common sense. The courts could then accept, as they should, the opinions of experts submitted by letters instead of being limited to cross-examined testimony.[4]

The requirement that a foreign statute be presented from an official text has been called an unreasonable one, particularly in view of the practice in continental countries of using unofficial texts.[5] Even if foreign country law is not made a matter of judicial knowledge, it would seem desirable to at least allow a judge to exercise his discretion in this area and to permit a relaxation of the requirement of authenticity where there has been no objection by a litigant to the adverse party's manner of proving the foreign law [6] or, conversely, to permit an insistence upon the requirement of authenticity of a proffered statute if such insistence seems indicated.[7]

[3] 136 Cal. App.2d 615, 289 P.2d 53 (1955).
[4] McCormick, *Judicial Notice*, 5 VAND. L. REV. 296, 308-309 (1952).
[5] While the English courts at first were unwilling to apply foreign law at all and declined to take jurisdiction in foreign law cases, they now, upon accepting foreign law, permit the use of unofficial texts. See I ROSCOE, EVIDENCE 112 (Henderson, 20th ed. 1934); Sack, *Conflicts of Laws in the History of the English Law* in 3 LAW, A CENTURY OF PROGRESS 342, 387-88 (1937).
[6] See Matter of Masocco v. Schaaf, 234 App. Div. 181, 254 N.Y. Supp. 439 (1931).
[7] Russian Reinsurance Co. v. Stoddard, 211 App. Div. 132, 207 N.Y. Supp. 574 (1925).

In cases in which the parties did not plead and prove the applicable law the common law courts did not ordinarily dismiss the case or grant a nonsuit or a directed verdict.[8] Instead, they invoked a presumption that the foreign law was the same as the law of the forum. The exact form of the presumption varied among American courts. Some courts presumed that the foreign law was similar to the common law of the forum prior to modification by statute.[9] Others presumed that the foreign law was the same as the common law and statutes of the forum.[10] A third group presumed only that the law of any foreign state having a common law background was the same as the law of the forum prior to modification by statute.[11]

The third view was the one originally held in California and is the more orthodox view throughout the United States. It was stated very early in California by Justice Field that the existence of the common law should be presumed in states which originally were colonies of England or carved out of territory subsequently acquired by the United States and whose government was largely established by emigrants from the other states.[12] However, California has shifted from this view and now presumes that all foreign law is the same as the common law and statutes of this State.[13] Moreover, when a relevant foreign statute requires interpretation, California courts presume that a court in the foreign jurisdiction would give it the same interpretation that the California courts would.[14] These presumptions are applied in cases involving foreign country law. For example, one court presumed that the law of the Philippines was the same as that of California in a case in which the court conceded that the law of the forum was not applicable.[15] Another court presumed the law of Mexico to be the same as California statutory law.[16] In an earlier case the law of Guatemala was presumed to be the same as the statutory law of California.[17] And recently the District Court of Appeal presumed that any doubt as to the validity of a divorce under the laws of China could, in an annulment proceeding brought by a second husband on the theory that there was no legal divorce in China, be resolved through the use of the local presumption in favor of the validity of an existing marriage, the law of China not being proved.[18] The effect of these cases, which are illustrative rather than exhaustive of all the learning in this direction, is that California courts will accept for adjudication cases involving foreign law without requiring proof of the foreign law.

[8] 3 BEALE, CONFLICT OF LAWS § 622A.1 (1935).
[9] Fern v. Crandell, 79 Colo. 403, 246 Pac. 270 (1926); Opp v. Pryor, 294 Ill. 538, 128 N.E. 580 (1920); Emerson Co. v. Proctor, 97 Me. 360, 54 Atl. 849 (1903). The common law of New York was applied in the absence of proof of a California statute in Matter of Smith, 136 Misc. 863, 242 N.Y. Supp. 464 (Sur. Ct. 1930).
[10] Tansil v. McCumber, 201 Iowa 20, 206 N.W. 680 (1925); Scott v. Beard, 5 Kan. App. 560, 47 Pac. 986 (1897); Franks v. Horrigan, 120 Neb. 1, 231 N.W. 27 (1930); Cochran v. Shetler, 286 Pa. 226, 133 Atl. 232 (1926).
[11] State *ex rel.* Gambill v. McElroy, 220 Ala. 452, 125 So. 903 (1930); see also, Adamson v. Fogelstrom, 221 Mo. App. 1243, 300 S.W. 841 (1927).
[12] Norris v. Harris, 15 Cal. 226 (1860).
[13] Loaiza v. Superior Court, 85 Cal. 11, 24 Pac. 707 (1890); authorities collected in *Conflict of Laws*, 5 CAL. JUR. 431, n. 4 (1922).
[14] Hickman v. Alpaugh, 21 Cal. 226 (1862); Kaplan v. Reid Bros., 104 Cal. App. 268, 285 Pac. 868 (1930).
[15] Perkins v. Benguet Cons. Min. Co., 55 Cal. App.2d 720, 132 P.2d 70 (1942).
[16] Silveyra v. Harper, 82 Cal. App.2d 761, 187 P.2d 83 (1947).
[17] Christ v. Superior Court, 211 Cal. 593, 296 Pac. 612 (1931).
[18] Birch v. Birch, 136 Cal. App.2d 615, 289 P.2d 53 (1955).

The use of a presumption that the law of a foreign country is the same as the law of the forum has often been criticized, and a few American courts have deemed it necessary to dismiss cases involving foreign country law when that law has not been properly presented.[19] The basis of the criticism is that a presumption that the law of a foreign country is the same as the law of the forum defies the credulity of the ordinary man, particularly when the foreign country is oriental, latin, or communistic. Such an inference has no rational basis in fact and constitutes little more than the arbitrary substitution of the law of the forum for the proper law applicable to the case. A pertinent criticism by Chief Justice von Moschzisker of Pennsylvania of the use of presumptions of similarity between local law and foreign law has been thus stated:

> A presumption of fact is justifiable only where there is a strong probability that the fact presumed is true; without this probability, the so-called presumption becomes an arbitrary rule of law, lacking foundation, except, perhaps, as a measure of convenience or of public policy.[20]

It should be noted that the presumption of similarity between local law and the law of a foreign country, as any other presumption, may be challenged under the due process clause of the Fourteenth Amendment, and the connection between the known fact and the presumed fact must be reasonable and logical for the presumption to withstand the challenge.[21] Moreover, the guarantees of the Fourteenth Amendment may well prevent the use of the law of the forum when the law of a foreign country is the proper law to be applied.[22]

JUDICIAL NOTICE OF NONFORUM LAW

With modern communications and improved library facilities, courts and legislatures came to believe that the common law rule forbidding the courts to notice what they could read and learn almost as easily as they did the law of their own state was unreasonable. Criticism of the rule was severe and widespread. One mid-western judge put it thus:

> Nor would it be indiscreet to add that the old rule that a court cannot consider and apply the general statutes of another state unless they are specially pleaded and formally proved, even to prevent a miscarriage of justice, is an anachronism which comes down from the times when statutes of other states were not readily accessible, and the judiciary will not wait much longer for legislative assistance to get rid of it altogether.[23]

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[19] Cuba R.R. Co. v. Crosby, 222 U.S. 473 (1912); Riley v. Pierce Oil Corp., 245 N.Y. 152, 156 N.E. 647 (1927).

[20] *Presumptions as to Foreign Law,* 11 MINN. L. REV. 1, 4 (1926).

[21] John Hancock Ins. Co. v. Yates, 299 U.S. 178 (1936); New York Life Ins. Co. v. Dodge, 246 U.S. 357 (1918); New York Life Ins. Co. v. Head, 234 U.S. 149 (1914); Owens v. Hagenbeck-Wallace Shows, 58 R.I. 162, 192 Atl. 158 (1937); see also, Pink v. A.A.A. Highway Express, 314 U.S. 201 (1941); Sovereign Camp v. Bolin, 305 U.S. 66, 119 A.L.R. 478 (1938); Dodd, *The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws,* 39 HARV. L. REV. 533 (1926).

[22] U.S. CONST. Art. IV, § 2 includes only sister states within the requirement of full faith and credit.

[23] Hammond Motor Co. v. Warren, 113 Kan. 44, 46, 213 Pac. 810, 811 (1923).

A judge of the Missouri Supreme Court said:

> [A]ppellant has cited Illinois cases as exemplifying the principles of law which it insists are controlling with respect thereto, the cause of action having arisen in the State of Illinois. The law as so interpreted would be controlling if we were cognizant of it. It was neither pleaded nor proven, and we cannot take judicial notice of it. This last seems an absurd thing to say when it is considered that the official reports of the courts of last resort of our sister state are lying here before us and that we frequently cite cases reported in them as persuasive authority in support of our own rulings. But until the Legislature sees fit to fully release us from this archaic rule * * * we are supposed to abide by it.[24]

The practice, necessitated by the common law rule, of committing to an untutored lay jury intricate questions of foreign law has been strongly condemned, and the limitations on the appellate courts in reviewing a jury decision have been disapproved. The New York Judicial Council, in proposing a departure from the rule, commented as follows:

> One of the greatest benefits of the proposed new section would be realized in appellate practice. It is in the appellate court that the present rule as to proof of matters of law binds the court in such a manner as to make it practically helpless in the face of an impending miscarriage of justice. Where, for example, counsel has neglected to prove a "foreign" law or a local ordinance, or an administrative rule in the trial court, the case, must either be dismissed, an artificial presumption indulged in by the court, or the case must be sent back for a new trial. Under the proposed rule, however, the appellate court would, if it were found reasonable and convenient, "judicially notice" the particular rule or law, asking for aid from counsel, or ascertaining the law for itself.[25]

In spite of the almost unanimous opposition to the rule, departure from it was slow. California, by the addition of Section 1875(3) to the Code of Civil Procedure in 1927, requiring the courts to take judicial notice of the law of sister states, is numbered among the earlier and more progressive states to change. The Uniform Judicial Notice of Foreign Law Act to effect nationwide change was proposed for adoption as late as 1936. However, thirty-seven states now authorize or require their courts to take judicial notice of the law of sister states.[26] But only five states have departed completely from the common law rule by authorizing or requiring judicial notice not only of sister state law but

[24] Gorman v. Terminal Ry. Co., 325 Mo. 326, 332-33, 28 S.W.2d 1023, 1024 (1930).

[25] Ninth Annual Report and Studies of the Judicial Council, State of New York 273 (1943).

[26] Twenty-five states have adopted the Uniform Judicial Notice of Foreign Law Act. 9 UNIF. LAWS ANN. 237 (Supp. 1955). In addition, the following states either authorize or require their courts to take judicial notice of sister state law:

Mandatory in form: ARK. STAT. ANN. § 28-109 (1947); CAL. CODE CIV. PROC. § 1875; CONN. GEN. STAT. §§ 7886, 7887 (1949); GA. CODE § 38-112 (1933); MASS. ANN. LAWS c. 233, § 70 (1956); MISS. CODE ANN. § 1761 (1942); VA. CODE ANN. tit. 8, § 8-273 (1948); W. VA. CODE ANN. c. 57, § 5711 (1955).

Permissive in form: MICH. COMP. LAWS c. 617, § 617.27 (1948); N.Y. CIV. PRAC. ACT § 344a. By judicial decision New Hampshire and Vermont have adopted the practice of taking judicial notice of sister state law: Saloshin v. Houle, 85 N.H. 126, 155 Atl. 47 (1931); State v. Rood, 12 Vt. 396 (1840) and more recently, Matter of Estate of Holden, 110 Vt. 60, 1 A.2d 721 (1938).

also of foreign country law.[27] California is not among these five. Hence, in California today, the common law rules that foreign law must be pleaded and proved as a fact and that in the absence of proof such law will be presumed to be the same as the decisional and statutory law of this State are still operative insofar as the law of foreign countries is concerned.[28]

It is the writer's belief that these common law rules should be abrogated in California and that foreign country law should be judicially noticed. There are, however, a number of practical problems presented by this proposal. The balance of this study is devoted to an analysis of these problems and recommendations for their solution.

Mandatory or Permissive Judicial Notice

Should the courts of this State be required to take judicial notice of foreign country law or should they simply be authorized to do so? The experience of the California courts with judicial notice of sister state law under Code of Civil Procedure Section 1875(3) and the experience of other states with judicial notice of both sister state and foreign country law is relevant in this connection.

Judicial Notice of Sister State Law in California. Code of Civil Procedure Section 1875 provides in part:

§ 1875. Courts take judicial notice of the following facts:

* * * * * * *

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 * * *.

This statute would appear to make it mandatory to take judicial notice of sister state law whenever it is applicable and seems to preclude the possibility of indulging a presumption that the law of a sister state is the same as the law of California. However, there is considerable doubt whether the courts of this State so construe the statute. In *Estate of Moore*[29] the District Court of Appeal sustained a presumption by the trial court that the law of Texas as to the right of an adopted child to succeed to the estate of a foster brother was the same as the law of California. Only a dissenting opinion in a denial of hearing in the Supreme Court expressed disapproval of the failure of the District Court of Appeal to insist upon use of the judicial notice statute. Such judicial resistance to the use of judicial notice of sister state law is important to note in drafting a similar statute to apply to foreign country law.

Judicial Notice of Sister State Law in Other States. Twenty-five states and one territory have adopted the Uniform Judicial Notice of Foreign Law Act proposed by the Commission on Uniform State Laws.[30]

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[27] Massachusetts, Mississippi, New York, Virginia and West Virginia. See note 26 *supra*.

[28] Nesbit v. MacDonald, 203 Cal. 219, 263 Pac. 1007 (1928); see also, Lefrooth v. Prentice, 202 Cal. 215, 259 Pac. 947 (1927).

[29] 7 Cal. App.2d 722, 47 P.2d 533, *hearing denied*, 48 P.2d 28 (1935). More recently, the Supreme Court asserted the mandatory character of the statute in determining whether penal offenses of other states are felonies or misdemeanors. *In re* Bartges, 44 Cal.2d 241, 282 P.2d 47 (1955).

[30] 9 UNIF. LAWS ANN. 237 (Supp. 1955).

The Uniform Act as proposed makes it mandatory for the courts to take judicial notice of the law of sister states. It provides:

> § 1. Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States.[31]

In addition, eight other states, including California, have statutes which appear to be mandatory. Two states authorize, but do not require, their courts to take judicial notice of the law of sister states.[32] The fact that such a great majority of the states have adopted and retained mandatory judicial notice statutes strongly suggests that this has proved to be a satisfactory solution of the problem so far as sister state law is concerned. Moreover, the Model Code of Evidence proposed by the American Law Institute, which represents the collective thinking of law professors, judges and practitioners, also recommends that the courts be required to take judicial notice of the law of sister states.[33] However, the problems presented by judicial knowledge of sister state law may well be simpler than those involved in foreign country law. The courts of one of the United States can readily find and understand the laws of another. But information as to what the law of a foreign country is may not be available and even when that law is found it may be impossible to understand because a different language and different legal concepts are involved.[34] We must therefore consider the experience of those states which have authorized or required their courts to judicially notice the law of foreign countries.

Judicial Notice of Foreign Country Law in New York and Massachusetts. Massachusetts, Mississippi, Virginia and West Virginia have, by statute, required their courts to take judicial notice of both sister state law and foreign country law. New York has enacted a permissive statute authorizing judicial notice of sister state and foreign country law. Because Massachusetts and New York are centers of extensive world trade and because their statutes have more frequently come before the courts than have those of Mississippi, Virginia and West Virginia, primary consideration will be given to their experience with judicial notice of foreign country law.

The New York statute provides in part:

> [A]ny trial or appellate court, in its discretion, may take judicial notice of the following matters of law:
>
> 1. A law, statute, proclamation, edict, decree, ordinance, or the unwritten or common law of a sister state, territory or other jurisdiction of the United States, or of a foreign country * * *.[35]

This statute was enacted after a careful study by the New York Judicial Council. The Report of the Judicial Council explained the decision to propose a permissive, rather than a mandatory, statute as follows:

> [U]nder the proposed new section the New York courts would not be *compelled* to notice the law of sister states nor foreign coun-

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[31] 9 UNIF. LAWS ANN. 401 (1936).
[32] See note 26 *supra*.
[33] MODEL CODE OF EVIDENCE, rules 802, 803, 804 (1942).
[34] Wood & Selick v. Compagnie Generale Transatlantique, 43 F.2d 941 (2d Cir. 1930).
[35] N.Y. CIV. PRAC. ACT. § 344a.

> tries. That is, where the applicable law is that of a foreign country whose system of jurisprudence and language is wholly different from ours, the trial court in its discretion might refrain from taking judicial notice thereof. But where the applicable law is that of a foreign country such as England, or Canada the court might, if it saw fit, take such judicial notice. * * * The proposed section would preserve the present, desirable, "flexibility" of the New York rule, by permitting the court to vary the necessity and kind of proof according to the difficulty of ascertaining the particular foreign law involved.[36]

The judicial observations of courts in New York following the enactment of the New York statute show that some difficulties have arisen when counsel fails to assist the court by presenting evidence and materials on the applicable foreign law. *Matter of Mason*[37] involved a question of whether an Italian check had been issued in violation of Italian exchange regulations. No specific learning on the Italian law had been presented to the trial court. The appellate court observed:

> Under section 344-a of the Civil Practice Act, the court in its discretion may take judicial notice of foreign law but there seems to be no occasion for independent research by the court when the parties themselves do not indicate in any manner the law upon which they rely. The Italian restrictions, if any apply to this transaction, are disregarded because not shown.[38]

Judge Walter in the case of *Arams* v. *Arams*[39] was required to make an extensive review of the case material and said among other things:

> Substantially, therefore, wherever, before the new section, a party was under the necessity of pleading and proving foreign law that same party now is under a like necessity, subject only to the qualification that the consequences of partial failure to prove such law may be mitigated, in the discretion of the court, by the court's supplementing the proof by its own researches.
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> * * *
>
> Taking all the cases together, I think the correct rule in relation to suits here upon contracts made or torts committed in States or countries which have not adopted or inherited the common law may be formulated thus: Where the complaint alleges facts which fairly may be assumed to create an obligation under the law of any civilized country, the plaintiff need not specifically allege the law of the State or country in which the things relied upon as giving rise to the asserted obligation took place, considerations of justice and convenience making it proper in such cases to cast upon the defendant the burden of showing, if that be the fact, that the law

[36] Ninth Annual Report and Studies of the Judicial Council, State of New York 284 (1943).

[37] 194 Misc. 308, 86 N.Y.S.2d 232 (Sur. Ct. 1948).

[38] *Id.* at 310, 86 N.Y.S.2d at 234.

[39] 182 Misc. 328, 45 N.Y.S.2d 251 (Sup. Ct. 1943). The somewhat loose New York rule on pleadings which is understood to exempt a party relying upon foreign law from a citation of exact chapter and verse has created difficulty in the United States District Court in New York. The rules of evidence of the federal court are the same as those of the state of New York but their rules of pleading are different. The District Court of New York has held that failure to plead with precision the foreign law relied on is a basis for denial of relief. Empresa Agricola Chicama Ltda. v. Amtorg Trading Corp., 57 F. Supp. 649 (S.D.N.Y. 1944).

> of such State or country is contrary to that assumption; but where the complaint alleges facts which do not make it reasonably certain that any civilized country would regard them as creating the asserted obligation, the plaintiff must allege the law of the State or country in which the things relied upon as giving rise to such obligation took place, considerations of justice and convenience making it proper in such cases to cast that burden upon the plaintiff. That is the rule which Professor Beale says "should do much toward achieving substantial justice in this branch of the law." [40]

Professor Rudolph B. Schlesinger of the Cornell Law School has indicated in a letter to the writer that when counsel points out that the law of a foreign country is applicable and assists the court in its effort to determine what that law is, New York's permissive statute works well, even in difficult cases:

> The only state which seems to have a substantial body of experience regarding judicial notice of foreign law is the State of New York. By and large, we are fairly satisfied with our section 344-a. The section is permissive, and the courts have frequently indicated that they will not engage in original research when dealing with the law of a country which has a different language and a different legal system. Nevertheless, the judicial notice provision of the statute is of tremendous importance even in a case in which the foreign law involved is the law of Afghanistan. Of course, if the parties fail to present any materials concerning the law of Afghanistan, the court, in the exercise of its discretion, will decline to make an independent study of that law. In that event, section 344-a is inoperative. But in the normal case, that is, the case in which the parties do offer some evidence concerning the foreign law, the judicial notice provision has the effect that such evidence does not have to be introduced with all the formality and subject to all the technical requirements of the law of evidence. The parties, in other words, are rather free in the choice of materials and in the method by which they present them; even materials and questions which would not be admissible under ordinary rules of evidence may be and often are accepted by the court as materials for judicial notice. Statements and declarations by officials of a foreign country, books which are not physically present in the courtroom, opinions by scholars not available for cross-examination—all of these may be submitted or referred to as material for judicial notice, even though they would not be admissible under rules of evidence.
>
> In this way, by the discretionary liberalization of the methods used for the court's education on matters of foreign law, a permissive judicial notice provision does a great deal of good, even though the courts in the exercise of their discretion will always decline to conduct independent and original research regarding the law of Afghanistan.[41]

[40] Arams v. Arams, 182 Misc. 328, 331-32, 335, 45 N.Y.S.2d 251, 254, 257 (Sup. Ct. 1943).

[41] Letter of October 29, 1955 sent in response to a question regarding the operation of Section 344a of the New York Civil Practice Act.

The Massachusetts statute appears on its face to be completely different from the New York statute because it leaves no discretion in the court but requires judicial notice of foreign country law in all cases. It provides:

> The courts shall take judicial notice of the law of the United States or of any state, territory or dependency thereof or of a foreign country whenever the same shall be material.[42]

One problem which has arisen under this statute is what an appellate court should do when counsel failed to call the attention of the trial court to the relevancy of foreign law and later urges the appellate court to find error for the trial court's failure to judicially notice and apply the foreign law. In *Lennon* v. *Cohen* [43] the Supreme Judicial Court said:

> An important question of foreign law, even under said c. 168, cannot be raised as of right at the argument in this court for the first time: and this court cannot thus be required to make a decision about it by taking judicial notice of it.[44]

The Bar criticized this statement as erroneous and the Judicial Council recommended:

> [T]hat the various courts . . . adopt the following rule for the guidance of the bar.
>
> "Whenever the law of any jurisdiction outside of Massachusetts shall be material it shall be the duty of counsel to call to the attention of the court such authorities or other material relating to the question as they wish the court to consider." [45]

Such a requirement, no doubt, makes it entirely fair to refuse to judicially notice foreign law when it is urged for the first time on appeal for it is a well-recognized principle of law that counsel may not urge his own error as the basis for reversal. Later, however, in *Walker* v. *Lloyd*,[46] the Supreme Judicial Court did consider for the first time on appeal the applicability of a foreign statute which had not been called to the attention of the trial court. It said that this fact "does not preclude this court from considering decisions and statutes * * * which are brought to the attention of this court." [47] But a few years later the same court when faced with a similar set of facts said: "The defendant is seeking here to raise an issue for the first time. It is too late, it would be a manifest injustice to allow it to do so." [48]

The experience of the Massachusetts courts and bar was thoroughly reviewed in a report published in the *Massachusetts Law Quarterly*. In commenting on the decisions discussed above, and others, this conclusion was reached:

> The net result of these decisions shows a fair rule for administration of the statute, although, if in the opinion of the court the

[42] MASS. ANN. LAWS c. 233, § 70 (1956).
[43] 264 Mass. 414, 163 N.E. 63 (1928).
[44] *Id.* at 421, 163 N.E. at 67.
[45] 32 MASS. L.Q. 20-21 (May 1947).
[46] 295 Mass. 507, 4 N.E.2d 306 (1936).
[47] *Id.* at 510, 4 N.E.2d at 308.
[48] Donahue v. Dal, Inc., 314 Mass. 460, 463, 50 N.E.2d 207, 209 (1943).

> interests of justice required in a particular case the court, as stated in *Walker* v. *Lloyd,* is not precluded for [*sic*] considering foreign law first called attention to in the appellate court any more than it is precluded from applying domestic law which no counsel on either side has mentioned.[49]
>
> * * *
>
> "If the law is readily available, like the law of Massachusetts or the law of Connecticut, in law libraries at hand, no question is likely to arise. If it is not readily available, however, and counsel interested in establishing that the law of some distant country governs the case and is to such and such an effect, does not assist the court with his authorities, the court is not called upon to make unreasonable researches in foreign law on its own motion and would be obliged to fall back upon reasonable presumptions that the law of such places is similar to the law of Massachusetts for the purpose of the case at hand unless satisfactory information to the contrary is produced." [50]

On the basis of these cases and comments it appears that the distinction which language seems to require between the Massachusetts statute and the New York statute as to mandatory and permissive application of judicial notice does not in fact exist to any substantial degree. Unless a Massachusetts court has been assisted by counsel in learning of the law of a sister state or foreign country, the Supreme Judicial Court has not insisted upon the use of the appropriate foreign law. Since fault of counsel in failing to assist the court to correctly decide his case will prevent a reversal of the trial court for an error caused by such omission, the Massachusetts statute, in effect, differs but little from the New York statute. The basic purpose of both statutes is not to eliminate the duty of counsel to make an adequate showing of foreign country law, but to simplify its proof and withdraw the question of what the foreign law is from the jury and make it reviewable as a question of law on appeal. In operation, neither statute compels judicial notice if the foreign law has not been adequately presented by counsel, but under both the courts do and probably must take judicial notice if they can ascertain what the applicable foreign law is.

Possible Solutions. It would appear that the ultimate objective of the courts and the Legislature should be to assure to the greatest degree possible, that when the rules of conflict of laws indicate that a case is governed by the law of a foreign jurisdiction, that foreign law is actually applied to the case. On the other hand, a court cannot be required to apply foreign country law to a case if it is unable to ascertain what that law is. Thus, it would appear that a statute should be enacted requiring the courts of this State to notice and apply foreign country law whenever they are able to determine what the applicable foreign law is and not otherwise. Under such a statute counsel desiring to have foreign law applied would have the burden of showing what that foreign law is and if an adequate showing were made, the courts would have to apply the foreign law.

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[49] 32 MASS. L.Q. 20, 21 (May 1947).
[50] *Id.* at 22, quoting from 11 MASS. L.Q. 7-8 (Aug. 1926).

Law To Be Applied When Foreign Country Law Cannot Be Determined

If the statute recommended herein is enacted or, indeed, if a permissive judicial notice statute were enacted the question arises as to what a court should do in a case in which foreign law is applicable but the court cannot determine what it is.

This question is analogous to the problem presented under the common law rule, discussed earlier, when the parties fail to plead and prove the applicable law. In this situation the New York courts apparently resort to one of the presumptions of similarity and apply New York law to the case. The same seems also to be true in Massachusetts. Without a specific statutory provision requiring them to do otherwise it seems likely that the California courts would also use the device of presuming that the foreign law is the same as California law.

It is arguable, however, that in such a situation the party relying upon the foreign law should lose the case, *e.g.*, that the plaintiff whose cause of action depends on the law of a foreign country should be nonsuited. This argument can be supported by pointing out that, as has been noted above, a presumption that the law of any foreign country is identical to that of California, whether decisional or statutory, is quite illogical. On the other hand, it seems undesirable to deny the parties any relief when they are unable to show what the applicable foreign law is. This is, of course, precisely the consideration which led to the common law presumption of identity between the law of the forum and that of the transaction state. One possible solution to the problem would be to authorize the courts to apply California law in such cases. The due process clause of the Fourteenth Amendment to the United States Constitution would preclude this result in those cases in which there was no connection or an insufficient connection between this State and the parties to the action or the transaction on which suit was brought. But these cases would probably be few in number and they could be handled by dismissing the action without prejudice. Such a statute would make it incumbent upon a party desiring to rely upon foreign law to make a sufficient showing thereof to make it obligatory upon the court to apply it under the modified form of mandatory judicial notice statute recommended above. Thus, for example, a defendant could not merely assert that foreign law is applicable and move for a nonsuit. Yet the rule suggested, while achieving the same result as the common law presumption of the similarity of forum and nonforum law, does not involve the logical fallacy inherent in the latter.

Notice

If the present rule that the law of a foreign country must be pleaded as any other fact in the case is eliminated by either authorizing or requiring the courts to take judicial notice of it, some alternative provision should be made for notice to the court and the parties that the law of a foreign country is thought applicable and will be relied upon. Such notice should be required not only by the parties but also by the court if it intends to decide the case under foreign law even though no party has requested it to do so.

Notice by a party of his intention to rely upon the law of another jurisdiction is proposed in the case of judicial notice of sister state law

by both the Uniform Act and the Model Code. The Uniform Act provides that:

> To enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties either in the pleadings or otherwise.[51]

The Model Code requires a court to take judicial notice of the law of a sister state if the party requesting it to do so has, among other things, "given each adverse party such notice, if any, as the judge deems necessary to enable the adverse party fairly to prepare to meet the request."[52] Moreover, the Model Code would require the judge to

> inform the parties of the tenor of any matter to be judicially noticed by him and afford each of them reasonable opportunity to present to him information relevant to the propriety of taking such judicial notice or to the tenor of the matter to be noticed.[53]

When the law of a foreign country, rather than the law of a sister state, is involved, it is even more necessary that both court and counsel be required to give reasonable notice that such law will be relied upon. Opposing counsel would rarely be able to assert from his general knowledge that the law of a foreign country on the specific point involved is not as stated by the party relying upon it. Extensive research would almost always be necessary. Without a requirement of notice, the danger of surprise would appear to be great.

Showing of Foreign Country Law

If the courts of this State were authorized or required to take judicial notice of foreign country law, it would seem that the problems of proof of such law would be greatly reduced if not entirely eliminated. We do not ordinarily think or speak of proving the law of California or the law of sister states which is judicially noticed under Section 1875(3) of the Code of Civil Procedure. If the law of foreign countries is made a matter of judicial knowledge, the rules of evidence presumably would not apply to documents considered by the court on its own motion. However, there may be some question whether documents and testimony submitted by counsel to aid the court in its determination would be subject to the present restrictions. Both the Uniform Act[54] and the Model Code[55] contain provisions as to what evidence shall be admissible in such a situation when the law of a sister state is involved. It would seem desirable, in order to avoid ambiguity or uncertainty, to specifically deal with the matter in connection with foreign country law also.

Whether there should be restrictions on the admissibility of documents and testimony offered by counsel to aid the court in its determination of what the applicable foreign law is, is a question which has

[51] Uniform Judicial Notice of Foreign Law Act § 4, 9 UNIF. LAWS ANN. 405 (1936). South Carolina and New Jersey modified the Uniform Act by requiring that the notice be given in the pleadings. S.C. CODE § 26-67 (1952); N.J. STAT. ANN. § 2A-82-27 (1952).
[52] Rule 803(c).
[53] Rule 804 (1).
[54] §§ 2, 4.
[55] Rule 804(2)(a) and 804(2)(b).

been resolved differently by different jurisdictions. The Uniform Act provides that "the court may inform itself of such laws [the laws of a sister state] in such manner as it may deem proper" [56] but that "any party may also present to the trial court any *admissible* evidence of such laws * * *." [Emphasis added.] [57] The Model Code, on the other hand, provides that "no rule requiring the exclusion of relevant evidence not subject to a valid claim of privilege shall apply * * *." [58] The New York statute, which applies to both sister state and foreign country law, provides:

> Where a matter of law specified in this section is judicially noticed, the court may consider any testimony, document, information or argument on the subject, whether the same is offered by counsel, a third party or discovered through its own research.[59]

Although the Massachusetts statute does not deal with the matter, the courts of that state apparently have relied upon statements by the local consul of a particular foreign country, by the United States consul in a foreign country or by the State Department as to what the law of a foreign country on a particular subject is.[60]

The argument in favor of relaxing the rules of admissibility when evidence of the law of a foreign country is being offered to the court for purposes of judicially noticing that law has been succinctly stated in the Report of the New York Judicial Council:

> "The proof of the rule of law, . . . is made in exactly the same manner as the proof of domestic law, and while counsel may argue the point, the process is not subject to rules of evidence in the sense that those rules apply to the proof of facts which are to be determined by the jury, or in the absence of a jury, by the court."
>
> Rather than a dispensation from the *need* of proof, a dispensation from technical *rules* of proof is intended by the proposed extension of the doctrine. It is submitted that although rules of evidence serve their purpose well when ordinary facts are being proved to a lay jury, they unduly hamper the court when it seeks to determine the rule of law (whether it be a "foreign" law or a local ordinance) applicable to a case. Under the proposed new section, the courts will be enabled to proceed directly to the determination of the applicable rules of law, instead of wasting time, money and effort on such collateral questions as whether the rules of evidence have been satisfied and the "proof" of such law has been properly made.[61]

POSSIBLE SOLUTIONS

Assuming that some change is desirable, the first possible solution of doing nothing is eliminated.

The second possibility is to amend Code of Civil Procedure Section 1875 (3) by adding a provision similar to that of Section 5 of the

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[56] § 2.
[57] § 4.
[58] Rule 804(2)(a).
[59] N.Y. CIV. PRAC. ACT § 344a.
[60] 32 MASS. L.Q. 20, 23 (May 1947).
[61] Ninth Annual Report and Studies of the Judicial Council, State of New York 272 (1943) quoting from Field, *Judicial Notice of Public Acts Under the Full Faith and Credit Clause*, 12 MINN. L. REV. 439, 466 (1928).

Uniform Judicial Notice of Foreign Law Act for the purpose of making foreign country law a question solely for the judge and not for the jury.

The third possibility is to enact a statute clarifying the use of presumptions of similarity of law so that the presumptions employed would possess some reasonable basis for their use, for example, restricting their use to countries such as Canada, Australia, New Zealand and England where there will be some similarity between the legal systems.

The fourth possibility is to adopt a permissive statute of judicial notice similar to that of Maryland which authorizes judicial notice of the laws of a foreign jurisdiction having a system of law based on the common law of England. "Every court of this State shall take judicial notice of the common law and statutes of every State, territory and other jurisdiction of the United States, and of every other jurisdiction having a system of law based on the common law of England." [62]

The fifth possibility is to adopt the permissive type statute of New York authorizing judicial notice of the laws of foreign countries.

The sixth possibility is to adopt a statute which is permissive in nature but adding restrictions which have been suggested by recognized authority. The statute presented by Keeffe, Landis and Shaad in "Sense and Nonsense About Judicial Notice" may suggest a useful pattern:

Proposed Model Judicial Notice of Law Act

(1) *Judicial Notice:* (*a*) Every trial or appellate court of this state shall take judicial notice of the common law and statutes of every state, territory, and other jurisdiction of the United States.

(*b*) Every trial and appellate court of this state shall take judicial notice of all laws, public and private statutes, proclamations, ordinances, and the unwritten or common law of this state, or any political division thereof. Any court, in its discretion, may take judicial notice of any rule or regulation of an executive department, public board, agency, or officer of the government of the United States, or of this state, or of a city, county, town, or village of this state.

(*c*) Any trial or appellate court of this state, in its discretion, may take judicial notice of the law and statutes of any foreign country, or political subdivision thereof; upon such notice as the court shall deem proper.

(2) *Information of the Court:* The court may inform itself of the applicable laws in such manner as it may deem proper, and the court may call upon counsel to aid in obtaining such information.

(3) *Evidence as to the Laws of Foreign Countries:* Any party may also present to the trial court any admissible evidence of the applicable laws, but, to enable a party to offer evidence of the law of a foreign country or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties either in the pleadings or otherwise.

(4) *Matters of Law for the Court:* All matters of law, whether judicially noticed pursuant to Section I, or formally proved,

[62] MD. ANN. CODE art. 35, § 56 (Flack, 1951).

shall be determined by the court or referee and included in its findings, or charged to the jury as the case may be, and such charge or finding shall be subject to review as to [*sic*] a question of law on appeal.

(5) *Interpretation:* This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(6) *Repeal:* All acts or parts of acts inconsistent with the provisions of this act, are hereby repealed.

(7) *Time of Taking Effect:* This act shall take effect . . . .[63]

The seventh possible solution is to adopt a statute similar to that of Mississippi which makes foreign country law as much within judicial knowledge as the law of the forum.[64]

The eighth possible solution is to adopt a statute similar to that of Massachusetts, which makes it mandatory for the courts of that state to take judicial notice of foreign country law.[65]

The ninth possible solution is to adopt a statute of any type mentioned above from the third to the eighth possibility and to prescribe the consequences of a failure to put the appropriate foreign law in issue.

A tenth possible solution, if the Federal Constitution will permit, is to adopt a statute requiring all cases, except those arising out of Acts of Congress, brought to the courts of California for trial, whether or not they involve conflict of laws, to be decided according to the laws of California.

[63] 2 STAN. L. REV. 664, 689-90 (1950).
[64] MISS. CODE ANN. § 1761 (1942).
[65] MASS. ANN. LAWS c. 233, § 70 (1956).

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