

#34(L)

12/4/63

Memorandum 63-61

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

We have sent you a copy of the tentative recommendation relating to Judicial Notice and suggested that you file it in your loose-leaf binder containing the "Uniform Rules of Evidence as Revised to Date." It is the purpose of this memorandum to suggest changes in the tentative recommendation on Judicial Notice (Revised December 1, 1963).

You will recall that at the November meeting the staff was requested to review all existing statutes dealing with judicial notice and to suggest appropriate revisions in the tentative recommendation in light of this review.

Attached as Exhibit I (pink pages) are the statutes relating to Judicial Notice. (Statutes amended or repealed by the tentative recommendation are not included in Exhibit I.)

The following is a section by section analysis of the various sections contained in Exhibit I.

Government Code Section 11383. No repeal or revision required.
See Rule 9(1)(b), page 4 of tentative recommendation.

Government Code Section 11384. No repeal or revision required.
See Rule 9(1)(b), page 4 of tentative recommendation.

Government Code Section 18576. It is suggested that this section be listed in Rule 9(1)(b). If this action is taken, no repeal or revision of Section 18576 is necessary.

Code of Civil Procedure Section 433. This section should be revised to conform its language to the tentative recommendation. (See page 4 of Exhibit I.) Note that Rule 9(3)(d) permits notice of 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. Section 433 is now limited to courts of this State.

Code of Civil Procedure Section 1827. This section should be revised to conform its language to the tentative recommendation. (See page 5 of Exhibit I.)

Penal Code Section 961. This section should be revised to make clear that it includes all matters listed in Rule 9. (See page 6 of Exhibit I.)

Penal Code Section 963. This section should be revised to make it clear that the various procedural protections included in Rules 10-12 apply when judicial notice is taken under Section 963. (See page 7 of Exhibit I.)

Civil Code Section 53. Should paragraph (c) be revised to read as indicated on page 8 of Exhibit I or should paragraph (c) be deleted?

Corporations Code Section 6602. This section should be revised as indicated on page 9 of Exhibit I.

Government Code Section 34330. The text of this section is set out on page 10 of Exhibit I. This section should be repealed. It is superseded by Rule 9(3)(b), (g), and (h).

Revision of Rule 9(5). In view of the revisions recommended above, it is recommended that subdivision (5) of Rule 9 be revised to read:

(5) Judicial notice may not be taken of any matter unless authorized or required by [this-rule] statute.

Respectfully submitted,

The Staff

Government Code

11383. Presumptions raised by filing; judicial notice. The filing of a certified copy of a regulation or an order of repeal with the Secretary of State raises the rebuttable presumptions that:.

(a) It was duly adopted.

(b) It was duly filed and made available for public inspection at the day and hour endorsed on it.

(c) All requirements of this chapter and the regulations of the department relative to such regulation have been complied with.

(d) The text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed.

Government Code

11384. Presumption from publication in code or register; judicial notice. The publication of a regulation in the California Administrative Code or Register raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

The courts shall take judicial notice of the contents of each regulation or notice of the repeal of a regulation printed in the California Administrative Code or California Administrative Register.

Government Code

18576. Judicial notice. Judicial notice shall be taken of board rules and amendments.

Code of Civil Procedure

433. Grounds not appearing on face of complaint; objection by answer; judicial notice of other actions pending; filing affidavit. When any of the matters 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 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 ~~[inveke]~~ invoking such notice.

Code of Civil Procedure

1827. Kinds of Evidence.

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.

Penal Code

961. Pleading presumptions or matters judicially noticed unnecessary.

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

Penal Code

963. Pleading private statutes or ordinances; judicial notice. 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.

Civil Code

53. Restrictions upon transfer or use of realty because of race, color, religion, ancestry or national origin.

(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.

Corporations Code

6602. Judicial notice of foreign laws and official acts. 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.

Government Code Section 34330 provides:

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