

#34(L)

9/3/64

Memorandum 64-60

Subject: Study No. 34(L) - Uniform Rules of Evidence (Evidence Code--
Division 4--Judicial Notice)

The division on judicial notice was revised prior to printing to reflect the several actions taken at the last meeting and to incorporate suggestions made by individual Commissioners. Some minor changes in language also were made for consistency.

We have received no additional comments on this division and we have no important matters of substance to raise for Commission consideration in connection with this division.

A catalog of several minor matters is mentioned below to assist in your consideration of this division.

1. Subdivisions (c) and (d) of Section 451 reflect previous Commission action. The listing in subdivision (d) is by way of example only and includes only those rules which a cursory examination disclosed as definitely falling within the substantive rule.

2. Subdivision (b) of Section 452 was revised to eliminate the previous ambiguity regarding "legislative enactments of public employees." We believe the revision accurately reflects the Commission's intent.

3. Subdivision (b) of Section 453 reflects previous Commission action.

4. Subdivision (b) of Section 454 was revised to conform to the style used in Section 402(c), since both subdivisions involve the same concept.

Respectfully submitted,

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DIVISION 4. JUDICIAL NOTICE

450. Judicial notice may be taken only as authorized by statute.

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

451. Matters which must be judicially noticed.

451. Judicial notice shall be taken of:

(a) The decisional, constitutional, and public statutory law of the United States and of every state of the United States.

(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 practice and procedure for the courts of this State adopted by the Judicial Council.

(d) Rules of pleading, practice, and procedure prescribed by the United States Supreme Court, such as the Rules of the United States Supreme Court, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Admiralty Rules, the Rules of the Court of Claims, the Rules of the Customs Court, and the General Orders and Forms in Bankruptcy.

(e) The true signification of all English words and phrases and of all legal expressions.

(f) Facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute.

452. Matters which may be judicially noticed.

452. Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

(a) Resolutions and private acts of the Congress of the United States and of the legislature of any state of the United States.

(b) Regulations and legislative enactments of (1) governmental agencies or public employees of the United States and (2) public entities or public employees of any state of the United States.

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

(d) Records of any court of this State or of any court of record of the United States or of any state of the United States.

(e) Rules of court of any court of record of the United States or of any state of the United States.

(f) The law of foreign countries and governmental subdivisions of foreign countries.

(g) Specific facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Specific facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

453. Compulsory judicial notice upon request.

453. (a) Judicial notice shall be taken of each matter specified in Section 452 if a party requests it and:

(1) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and

(2) Furnishes the judge with sufficient information to enable him to take judicial notice of the matter.

(b) If the judge denies a request to take judicial notice of such a matter, he shall at the earliest practicable time so advise the parties and indicate for the record that he has denied the request.

454. Information that may be used in taking judicial notice.

454. In determining the propriety of taking judicial notice of a matter or the tenor thereof:

(a) 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.

(b) Exclusionary rules of evidence do not apply except for Section 352 and the rules of privilege.

455. Opportunity to present information to judge.

455. With respect to any matter specified in Section 452 that is reasonably subject to dispute and of substantial consequence to the determination of the action:

(a) Before judicial notice of such matter may be taken, the judge shall afford each party reasonable opportunity to present to him information relevant to (1) the propriety of taking judicial notice of the matter and (2) the tenor of the matter to be noticed.

(b) If the judge resorts to any source of information not received in open court, including the advice of persons learned in the subject matter,

such information and its source shall be made a part of the record in the action and the judge shall afford each party reasonable opportunity to meet such information before judicial notice of the matter may be taken.

456. Noting for record matter judicially noticed.

456. The judge shall at the earliest practicable time indicate for the record the matter which is judicially noticed and the tenor thereof if the matter judicially noticed:

(a) Is a matter that is reasonably subject to dispute and of substantial consequence to the determination of the action; and

(b) Is not a matter specified in subdivisions (a) or (e) of Section 451.

457. Instructing jury on matters noticed.

457. If a matter judicially noticed is a matter which would otherwise have been for determination by the jury, the judge may and upon request shall instruct the jury to accept as a fact the matter so noticed.

458. Judicial notice in proceedings subsequent to trial.

458. (a) The failure or refusal of the judge to take judicial notice of a matter, or to instruct the jury with respect to the matter, does not preclude the judge from taking judicial notice of the matter in subsequent proceedings in the action.

(b) The reviewing court shall take judicial notice of (1) each matter properly noticed by the judge and (2) each matter that the judge was required to notice under Section 451 or 453. The reviewing court may take judicial notice of any matter specified in Section 452. The reviewing court may take judicial notice of a matter in a tenor different from that noticed by the judge.

(c) In determining the propriety of taking judicial notice of a matter, or the tenor thereof, the reviewing court has the same power as the judge under Section 454.

(d) When taking judicial notice under this section of a matter specified in Section 452 that is reasonably subject to dispute and of substantial consequence to the determination of the action, the judge or reviewing court shall comply with the provisions of subdivision (a) of Section 455 if the matter was not theretofore judicially noticed in the action.

(e) In determining the propriety of taking judicial notice of a matter specified in Section 452 that is reasonably subject to dispute and of substantial consequence to the determination of the action, or the tenor thereof, if the reviewing court resorts to any source of information not received in open court or not included in the record of the action, including the advice of persons learned in the subject matter, the reviewing court shall afford each party reasonable opportunity to meet such information before judicial notice of the matter may be taken.