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DEERING'S CALIFORNIA CODES ANNOTATED
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7, AND 8, AND URGENCY LEGISLATION THROUGH CH 161 OF THE 2010 REGULAR SESSION

EVIDENCE CODE
Division 4. Judicial Notice

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Cal Evid Code § 452 (2010)

§ 452. Matters which may be judicially noticed

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

(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.

(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in 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 (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(g) 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) 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.

HISTORY:

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

NOTES:

Historical Derivation:

- (a) Former CCP § 1827, as enacted Stats 1872.
- (b) Former CCP § 1875, as enacted Stats 1872, amended Stats 1927 p 110, Stats 1957 ch 249 § 1.
- (c) Former CCP § 2102, as enacted Stats 1872.

Law Revision Commission Comments:

1965

Section 452 includes matters both of law and of fact. The court may take judicial notice of these matters, even when not requested to do so; it is required to notice them if a party requests it and satisfies the requirements of Section 453.

The matters of law included under Section 452 may be neither known to the court nor easily discoverable by it because the sources of information are not readily available. However, if a party requests it and furnishes the court with "sufficient information" for it to take judicial notice, the court must do so if proper notice has been given to each adverse party. See *Evidence Code § 453*. Thus, judicial notice of these matters of law is mandatory only if counsel adequately discharges his responsibility for informing the court as to the law applicable to the case. The simplified process of judicial notice can then be applied to all of the law applicable to the case, including such law as ordinances and the law of foreign nations.

Although Section 452 extends the process of judicial notice to some matters of law which the courts do not judicially notice under existing law, the wider scope of such 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 court. Under Section 453, this burden falls upon the party requesting that judicial notice be taken. In addition, the parties are entitled under Section 455 to a reasonable opportunity to present information to the court as to the propriety of taking judicial notice and as to the tenor of the matter to be noticed.

Listed below are the matters that may be judicially noticed under Section 452 (and must be noticed if the conditions specified in Section 453 are met).

Law of sister states. Subdivision (a) provides for judicial notice of the decisional, constitutional, and statutory law in force in sister states. California courts now take judicial notice of the law of sister states under subdivision 3 of *Section 1875 of the Code of Civil Procedure*. However, Section 1875 seems to preclude notice of sister-state law as interpreted by the intermediate-appellate courts of sister states, whereas Section 452 permits notice of relevant decisions of all sister-state courts. If this be an extension law, it is a desirable one, for the courts of sister states generally can be considered as responsive to the need for properly determining the law as are equivalent courts in California. The existing law also is not clear as to whether a request for judicial notice of sister-state law is required and whether judicial notice is mandatory. On the necessity for a request for judicial notice, see Comment, *24 Cal L Rev. 311 (1936)*.

On whether judicial notice is mandatory, see *In re Bartges, 44 Cal 2d 241, 282 P2d 47 (1955)*, and the opinion of the Supreme Court in denying a hearing in *In re Estate of Moore (1935) 7 Cal App 2d 722, 48 P2d 28*.

Law of territories and possessions of the United States. Subdivision (a) also provides for judicial notice of the decisional, constitutional, and statutory law in force in the territories and possessions of the United States. See the broad definition of "state" in *Evidence Code* § 220. It is not clear under existing California law whether this law is treated as sister-state law or foreign law. See Witkin, *California Evidence* § 45 (1958).

Resolutions and private acts. Subdivision (a) provides for judicial notice of 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. See the broad definition of "state" in *Evidence Code* § 220.

The California law on this matter is not clear. Our courts are authorized by subdivision 3 of *Code of Civil Procedure Section 1875* to take judicial notice of private statutes of this State and the United States, and they 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 judicial notice of a private act pleaded in a criminal action pursuant to *Penal Code Section 963* is mandatory, whereas judicial notice of the same private act may be discretionary when pleaded in a civil action pursuant to *Section 459 of the Code of Civil Procedure*.

Although no case in point has 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).

Regulations, ordinances, and similar legislative enactments. Subdivision (b) provides for judicial notice of regulations and legislative enactments adopted by or under the authority of the United States or of any state, territory or possession of the United States, including public entities therein. See the broad definition of "public entity" in *Evidence Code* § 200. The words "regulations and legislative enactments" include such matters as "ordinances" and other similar legislative enactments. Not all public entities legislate by ordinance.

This subdivision changes existing law. Under existing law, municipal courts take judicial notice of ordinances in force within their jurisdiction. *People v. Cowles* (1956) 142 Cal App 2d Supp 865, 298 P2d 732, 1956 Cal. App. LEXIS 2062; *People v. Crittenden* (1949) 93 Cal App 2d Supp 871, 209 P2d 161, 1949 Cal. App. LEXIS 1481. In addition, 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 in a civil action of municipal or county ordinances. *Thompson v Guyer-Hays*, 207 Cal App 2d 366, 24 Cal Rptr 461 (1962); *County of Los Angeles v. Bartlett*, 203 Cal App 2d 523, 21 Cal Rptr 776 (1962); *Becerra v. Hochberg*, 193 Cal App 2d 431, 14 Cal Rptr 101 (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.

Judicial notice of certain regulations of California and federal agencies is mandatory under subdivision (b) of Section 451. Subdivision (b) of Section 452 provides for judicial notice of California and federal regulations that are not included under subdivision (b) of Section 451 and, also, for judicial notice of regulations of other states and 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 Evidence § 24. Although no case in point has 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.

Official acts of the legislative, executive, and judicial departments. Subdivision (c) provides for judicial notice of the official acts of the legislative, executive, and judicial departments of the United States and any state, territory, or possession of the United States. See the broad definition of "state" in *Evidence Code* § 220. Subdivision (c) states existing law as found in subdivision 3 of *Code of Civil Procedure Section 1875*. Under this provision, the California 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, records of the State Board of Education, and records of a county planning commission. See Witkin, California Evidence § 49 (1958), and 1963 Supplement thereto.

Court records and rules of court. Subdivisions (d) and (e) provide for judicial notice of the court records and rules of court of (1) any court of this State or (2) any court of record of the United States or of any state, territory, or possession of the United States. See the broad definition of "state" in *Evidence Code* § 220. So far as court records are concerned, subdivision (d) states existing law. *Flores v. Arroyo*, 56 Cal 2d 492, 15 Cal Rptr 87, 364 P2d 263 (1961). While the provisions of subdivision (c) of Section 452 are broad enough to include court records, specific mention of these records in subdivision (d) is desirable in order to eliminate any uncertainty in the law on this point. See the Flores case, supra.

Subdivision (e) may change existing law so far as judicial notice of rules of court is concerned, but the provision is consistent with the modern philosophy of judicial notice as indicated by the holding in *Flores v Arroyo*, supra. To the extent that subdivision (e) overlaps with subdivisions (c) and (d) of Section 451, notice is, of course, mandatory under Section 451.

Foreign law. Subdivision (f) provides for judicial notice of the law of organizations of nations, foreign nations, and public entities in foreign nations. See the broad definition of "public entity" in *Evidence Code* § 200. Subdivision (f) should be read in connection with Sections 310, 311, 453, and 454. These provisions retain the substance of the existing law which was enacted in 1957 upon recommendation of the California Law Revision Commission. *Code Civ. Proc* § 1875. See 1 Cal Law Revision Comm'n, Rep, Rec & Studies, Recommendation and Study Relating to Judicial Notice of the Law of Foreign Countries at I-1 (1957).

Subdivision (f) refers to "the law" of organizations of nations, foreign nations, and public entities in foreign nations. This makes all law, in whatever form, subject to judicial notice.

Matters of "common knowledge" and verifiable facts. Subdivision (g) provides for judicial notice of matters of common knowledge within the court's territorial jurisdiction that are not subject to dispute. "Territorial jurisdiction," in this context, refers to the county in which a superior court is located or the judicial district in which a municipal or justice court is located. The fact of which notice is taken need not be something physically located within the court's territorial jurisdiction, but common knowledge of the fact must exist within the court's territorial jurisdiction. Subdivision (g) reflects existing case law. *Varcoe v. Lee*, 180 Cal 338, 181 Pac 223 (1919); 18 Cal Jur 2d Evidence § 19 at 439-440. The California courts have taken judicial notice of a wide variety of matters of common knowledge. Witkin, California Evidence §§ 50-52 (1958).

Subdivision (h) 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 determining the tenor of the matter to be noticed.

Subdivisions (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. These subdivisions include such matters listed in *Code of Civil Procedure Section 1875* as the "geographical divisions and political history of the world." To the extent that subdivisions (g) and (h) overlap subdivision (f) of Section 451, notice is, of course, mandatory under Section 451.

The matters covered by subdivisions (g) and (h) are included in Section 452, rather than Section 451, because it seems reasonable to put the burden on the parties to bring adequate information before the court if judicial notice of

these matters is to be mandatory. See *Evidence Code § 453* and the Comment thereto.

Under existing law, courts take judicial notice of the matters that are included under subdivisions (g) and (h), either pursuant to *Section 1875 of the Code of Civil Procedure* or because such matters are matters of common knowledge which are certain and indisputable. Witkin, *California Evidence* §§ 50-52 (1958). Notice of these matters probably is not compulsory under existing law. (As amended in the Legislature.)

Cross References:

"Public entity": *Ev C § 200*.

"State": *Ev C § 220*.

Judicial notice of certain matters required: *Ev C § 451*.

Information that may be used in taking judicial notice: *Ev C § 454*.

Affording opportunity to present, to court, information respecting matter subject to judicial notice: *Ev C § 455*.

Judicial notice by reviewing court: *Ev C § 459*.

Judicial notice of recorded instruments containing unlawful restrictions as to sex, race, color, religion, etc.: *CC § 53*.

Judicial notice of private statutes or ordinances mentioned in pleadings in criminal proceedings: *Pen C § 963*.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 3 "Abatement Of Actions".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 50 "Appeal: Briefs".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 76 "Attorney Professional Liability".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 321 "Judicial Notice".

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 328 "Juvenile Courts: Dependency Proceedings".

Cal. Points & Authorities (Matthew Bender(R)) ch 10 "Abatement And Survival Of Actions," § 10.07.

Cal. Points & Authorities (Matthew Bender(R)) ch 10 "Abatement And Survival Of Actions," § 10.30.

Cal. Points & Authorities (Matthew Bender(R)) ch 10 "Abatement And Survival Of Actions," § 10.39.

Cal. Points & Authorities (Matthew Bender(R)) ch 24A "Attorneys At Law: Malpractice," § 24A.33.

Cal. Points & Authorities (Matthew Bender(R)) ch 34 "Checks And Banks," § 34.73.

Cal. Points & Authorities (Matthew Bender(R)) ch 52 "Corporations," § 52.21.

Cal. Points & Authorities (Matthew Bender(R)) ch 61 "Cross Complaints," § 61.27.

Cal. Points & Authorities (Matthew Bender(R)) ch 61 "Cross Complaints," § 61.90.

Cal. Points & Authorities (Matthew Bender(R)) ch 67 "Declaratory Relief," § 67.21.

Cal. Points & Authorities (Matthew Bender(R)) ch 67 "Declaratory Relief," § 67.40.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.127.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.310.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.330.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.350.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.360.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.380.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.400.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.410.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.420.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.430.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.441.

Cal. Points & Authorities (Matthew Bender(R)) ch 70 "Defaults Default Judgments And Relief From Judgments And Orders," § 70.450.

Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings," § 71.03.

Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings," § 71.21.

Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings," § 71.24.

Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings," § 71.26.

Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings," § 71.31.

Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings," § 71.34.

Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings," § 71.42.

Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings," § 71.65.

Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings," § 71.73.

Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings," § 71.151.

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations," § 81.333.

Cal. Points & Authorities (Matthew Bender(R)) ch 132 "Jurisdiction: Personal Jurisdiction And Inconvenient Forum," § 132.154.

Cal. Points & Authorities (Matthew Bender(R)) ch 142 "Libel And Slander (Defamation)," § 142.44.

Cal. Points & Authorities (Matthew Bender(R)) ch 147 "Malicious Prosecution And Abuse Of Process," § 147.32.

Cal. Points & Authorities (Matthew Bender(R)) ch 158 "Motions To Reconsider And Renewed Motions," § 158.33.

Cal. Points & Authorities (Matthew Bender(R)) ch 158 "Motions To Reconsider And Renewed Motions," § 158.34.

Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike," § 160.31.

Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike," § 160.42.

Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike," § 160.60.

Cal. Points & Authorities (Matthew Bender(R)) ch 171 "Paternity," § 171.20.

Cal. Points & Authorities (Matthew Bender(R)) ch 180 "Pretrial Proceedings," § 180.30.

Cal. Points & Authorities (Matthew Bender(R)) ch 196 "Public Entities," § 196.185.

Cal. Points & Authorities (Matthew Bender(R)) ch 200 "Receivers," § 200.440.

Cal. Points & Authorities (Matthew Bender(R)) ch 200 "Receivers," § 200.441.

Cal. Points & Authorities (Matthew Bender(R)) ch 201 "Reference And Referees," § 201.50.

Cal. Points & Authorities (Matthew Bender(R)) ch 201 "Reference And Referees," § 201.52.

Cal. Points & Authorities (Matthew Bender(R)) ch 220 "Subrogation," § 220.34.

Cal. Points & Authorities (Matthew Bender(R)) ch 221 "Summary Judgments," § 221.46.

Cal. Employment Law (Matthew Bender(R)), § 21.45.

Cal. Employment Law (Matthew Bender(R)), § 21.48.

Cal. Employment Law (Matthew Bender(R)), § 21.70.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 63.04.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 93.21.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 140.88.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 150.39.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 150.40.

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 321 "Judicial Notice", § 321.15.

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 537 "Summary Judgment" B.

Cal. Torts (Matthew Bender(R)), § 32.15.

Cotchett, California Courtroom Evidence, § 12.03 (Matthew Bender).

Matthew Bender (R) Practice Guide: Cal. Debt Collection and Enforcement of Judgments §§ 7.03, 7.09.

Matthew Bender (R) Practice Guide: Cal. Trial and Post Trial Civil Procedure §§ 4.16[1], 11.113, 11.116, 29.32[1], 29.76.

Matthew Bender(R) Practice Guide: *California Contract Litigation*, 11.20

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 7.12.

Matthew Bender(R) Practice Guide: *California Pretrial Civil Procedure, ch 11, "Demurrers and Motions for Judgment on the Pleadings"*, §§ 11.16 [3] [b], 11.24 et seq.

Matthew Bender(R) Practice Guide: *California Pretrial Civil Procedure, ch 26, "Law and Motion Procedure"*, §§ 26.39 et seq., 26.46 et seq.

Witkin & Epstein, Criminal Law (3d ed), Defenses § 15.

Witkin & Epstein, Criminal Law (3d ed), Defenses §§ 236, 237.

1 Witkin Cal. Evidence (4th ed) Hearsay § 116.

1 Witkin Cal. Evidence (4th ed) Judicial Notice §§ 4-47.

Cal. Juvenile Courts Practice and Procedure (Matthew Bender(R)), Parentage Proceedings in Dependency Cases, § 2.6

California Trial Guide, Unit 20, "Procedural Rules for Presentation of Evidence", § 20.60 [c] (Matthew Bender).

Cal Jur 3d (Rev) Criminal Law § 2761; Delinquent and Dependent Children § 192.

Jefferson's California Evidence Benchbook, 3rd Edition (CEB, 20032) § 47.7.

Handling expert witnesses in California courts. CEB Action Guide, Summer 1990.

Laying a Foundation To Introduce Evidence (Preparing and Using Evidence at Trial). CEB Action Guide, Summer 1991.

Rutter Cal Prac Guide, Civil Procedure Before Trial §§ 7:17 et seq.

Rutter Cal Prac Guide, Civil Trials and Evidence §§ 8:855 et seq.

Rutter Cal Prac Guide, Civil Appeals and Writs §§ 5:154 et seq.

Law Review Articles:

Judicial notice by court of its own records. *2 Cal LR 66.*

Implied exclusion of other matters. *3 Cal LR 239.*

Judicial notice. *6 Cal LR 377.*

Judicial notice, presumptions and burden of proof. *13 Cal LR 472.*

Presumptions as to foreign law. *17 Cal LR 417.*

Discretion of court to take notice of economic emergency. *21 Cal LR 522.*

Judicial notice on demurrer. *40 Cal LR 193.*

Presumptions as to law of foreign countries. *42 Cal LR 701.*

Judicial notice and proof of foreign law. *45 Cal LR 23.*

One Step Forward, Two Steps Back: How California's 2008 Constitutional Amendment Changed the State's Eminent Domain Power. *39 Southwestern LR 209.*

Judicial notice of foreign law. *39 LA Bar B 7.*

Judicial notice of foreign judgments. *39 LA Bar B 11.*

Foreign law. *1 SCLR 190.*

Relation of judicial notice to title insurance. *2 SCLR 151.*

Acts of executive department. *10 SCLR 514.*

Judicial notice of proceedings of administrative boards. *21 SCLR 267.*

Proving foreign law in California. *25 SCLR 338.*

Sharp restrictions on judicial notice. *2 Stan LR 664.*

Admissibility of medical books in evidence. *8 USF LR 364.*

Annotations:

Judicial notice of changes in cost of living or in purchasing power of money in reviewing damages for personal injuries or death. *12 ALR2d 611.*

Uniform Judicial Notice of Foreign Law Act. *23 ALR2d 1437.*

Reception of evidence to contradict or rebut matters judicially noticed. *45 ALR2d 1169.*

Judicial notice of matters relating to public thoroughfares and parks. *48 ALR2d 1102.*

Judicial notice of intoxicating quality, and the like, of liquor or particular liquid, from its name. *49 ALR2d 764.*

Judicial notice of diseases or similar conditions adversely affecting human beings. *72 ALR2d 554.*

Judicial notice of drivers' reaction time and of stopping distance of motor vehicles traveling at various speeds. *84 ALR2d 979.*

Pleading and proof of law of foreign country. *75 ALR3d 177.*

Judicial notice as to location of street address within particular political subdivision. *86 ALR3d 484.*

What constitutes "adjudicative facts" within meaning of rule 201 of federal rules of evidence concerning judicial notice of adjudicative facts. *150 ALR Fed 543.*

Hierarchy Notes:

Evid Code Note

Div. 4 Note

NOTES OF DECISIONS 1. In General 2. Regulations, Ordinances and the Like 3. Official Government Acts 4. Court Records and Rules of Court 5. Foreign Law 6. Matters of Common Knowledge 7. Indisputable Facts 8. Judicial Notice Denied 9. Judicial Notice Taken

1. In General

On review of a recommendation of discipline of an attorney by the State Bar, petitioner could not successfully raise an issue concerning a particular photostatic copy having been made from an unstapled original, where he had requested and was granted a second hearing before the trial committee, partially on the ground of newly-discovered evidence relating to such photostat, where he then submitted no evidence at all on the issue, and where, though his counsel referred to the matter in closing argument as if it had some basis in the record, there was none, nor could the court, in the absence of evidence, take judicial notice that the photostat was made from an unstapled original. *Barreiro v. State Bar of California (1970) 2 Cal 3d 912, 88 Cal Rptr 192, 471 P2d 992, 1970 Cal LEXIS 317.*

A demurrer reaches not only the contents of the pleading itself, but also such matters as may be considered under the doctrine of judicial notice. The complaint is to be read as if it contains all matters of which the court can take

judicial notice even in the face of allegations to the contrary. *Saltares v. Kristovich* (1970, Cal App 2d Dist) 6 Cal App 3d 504, 85 Cal Rptr 866, 1970 Cal App LEXIS 1355.

Although generally, on a motion for judgment on the pleadings, the court may not consider matters extrinsic to the pleading under attack, nevertheless, the court properly took judicial notice of an assignment not pleaded in the complaint, but filed as an exhibit with the answer, where to fail to take such notice would have resulted in ignoring a pivotal factor in the proper resolution of the case, where requirements of *Ev C* §§ 452, 453, concerning judicial notice, were satisfied, and where, viewing the matter as a summary judgment, the assignment's effect presented a question of law which, it resolved against plaintiff, would be conclusive and leave no room for triable issues of fact. *Purcell v. Colonial Ins. Co.* (1971, Cal App 2d Dist) 20 Cal App 3d 807, 97 Cal Rptr 874, 1971 Cal App LEXIS 1222.

Ev C § 452, declaring that judicial notice may be taken of decisional law and of public and private acts of any state, applies to counties, inasmuch as they are legal departments of the state. Cities, however, are not connected political subdivisions of the states. Therefore, in a mandamus proceeding to compel a city to reinstate petitioner to the position of policeman from which he had been dismissed following an administrative hearing on misconduct charges, it was not error for the court to refuse to take judicial notice of the city's records relating to punishment imposed in cases involving other policemen. *Marino v. Los Angeles* (1973, Cal App 2d Dist) 34 Cal App 3d 461, 110 Cal Rptr 45, 1973 Cal App LEXIS 816.

Advertisements and brochures by private corporations are not appropriate subjects of judicial notice because they do not contain matters of common knowledge within the territorial jurisdiction of the court (*Ev C* § 452), and there is no other statutory basis for judicial notice of such information. *Carleton v. Tortosa* (1993, Cal App 3d Dist) 14 Cal App 4th 745, 17 Cal Rptr 2d 734, 1993 Cal App LEXIS 319, review denied (1993, Cal) 1993 Cal LEXIS 3609.

While the administrative record did not show that an attorney, who was the city's advocate for the initial denial of the renewal permit application of adult establishment operators, actually gave a hearing officer advice or assistance during a review of the denial of the application, the court took judicial notice, under *Ev C* § 452, that communications between bench officers and their staff on matters of law and procedure were normally not reported, and the omission in the hearing officer's declaration concerning these allegations created an inference, under *Ev C* § 1221, that the attorney did advise the hearing officer, and because the hearing officer's declaration was directly related to whether the hearing was fair, the trial court was required to exercise its independent judgment to decide such an issue, and under *CCP* § 1094.5, was empowered to admit relevant and admissible evidence on the issue, and thus erred by refusing to admit the hearing officer's declaration; however, given the circumstances, there was substantial evidence to support the conclusion that, in addition to taking an active part in the renewal application process, the attorney also participated in the administrative review of the denial by advising the hearing officer, which hearing violated the operators' procedural due process rights. *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003, Cal App 2d Dist) 108 Cal App 4th 81, 133 Cal Rptr 2d 234, 2003 Cal App LEXIS 612.

Because no opposition had been filed to certain requests for judicial notice, the court granted the requests under *Ev C* §§ 452(c), (d), 459(a). *People v. Konow* (2004) 32 Cal 4th 995, 12 Cal Rptr 3d 301, 88 P3d 36, 2004 Cal LEXIS 3385, rehearing denied (2004) 2004 Cal. LEXIS 6037.

Court denied to take judicial notice as to post-enrollment documents concerning *CCP* § 1281.2(c) because they were not proper indicia of legislative intent, given that it was not reasonable to infer that they were ever read or considered by the legislature; the court also refused to take judicial notice of material from the file of the legislative representative of the California State Bar because there was no evidence that the committee report was presented to the legislators. *Whaley v. Sony Computer Entertainment America, Inc.* (2004, Cal App 4th Dist) 121 Cal App 4th 479, 17 Cal Rptr 3d 88, 2004 Cal App LEXIS 1285.

Court took judicial notice of a legislative history document under *Ev C* § 452(c) even though the document was ultimately of little or no help in ascertaining legislative intent, given that it was unknown who prepared the document

and for what purpose. *Lodge at Torrey Pines Partnership* (2008, Cal) 42 Cal 4th 1158, 72 Cal Rptr 3d 624, 177 P 3d 232, 2008 Cal LEXIS 2504, rehearing denied *Jones (Scott) v. Lodge at Torrey Pines Partnership* (2008, Cal.) 2008 Cal. LEXIS 5120.

Reviewing court declined defendant's request under Ev C § 451, Ev C § 452, and Ev C § 459 to take judicial notice of articles relating to brain death; articles were irrelevant to court's finding that a bodily injury enhancement did not require a comatose condition to be permanent. *People v. Galvan* (2008, 4th Dist) 168 Cal App 4th 846, 85 Cal Rptr 3d 776, 2008 Cal App LEXIS 2351, review denied *People v. Galvan (Jesus Alberto)* (2009, Cal.) 2009 Cal. LEXIS 1271.

2. Regulations, Ordinances and the Like

A city zoning ordinance requiring portable or temporary vending establishments to obtain use permits was not unconstitutional for a lack of sufficiently defined guidelines or standards of enforcement, where another ordinance of which the court could take judicial notice (Ev C § 452) sufficiently indicated general standards to be considered by the city planning commission before recommending approval of a land use permit to the city council. *Melton v. San Pablo* (1967, Cal App 1st Dist) 252 Cal App 2d 794, 61 Cal Rptr 29, 1967 Cal App LEXIS 1570.

The trial court erred in sustaining a demurrer to the second count of a complaint by a minor against a city under Gov C § 835, for personal injuries incurred when plaintiff was run over by a railroad train, where it was alleged that the city owned the railroad right-of-way, where the city ordinance granting the franchise to the railroad, of which the trial and appellate courts could take judicial notice (Ev C §§ 451, 452, 459), showed that the right-of-way was public property (Gov C § 830), where sufficient facts were pleaded to show that the city could reasonably foresee that children would be attracted to trains and railroads cars operating over and upon the street in question, and that they might be injured if reasonable precautions were not taken to protect them from the risk, and where such allegations, when coupled with the allegations that such precautions were not taken and that plaintiff, a six-year-old child, was attracted to such train and sustained injuries when thrown under the wheels thereof, sufficed to state a cause of action. *Holmes v. Oakland* (1968, Cal App 1st Dist) 260 Cal App 2d 378, 67 Cal Rptr 197, 1968 Cal App LEXIS 1866.

The appellate court will take judicial notice of Federal Aviation Regulations, as well as of the *Federal Aviation Act*. *Rader v. Apple Valley Bldg. & Development Co.* (1968, Cal App 2d Dist) 261 Cal App 2d 308, 68 Cal Rptr 108, 1968 Cal App LEXIS 1747.

In a prosecution for possession of a restricted dangerous drug, the failure of the trial court to take judicial notice of a city ordinance prohibiting drinking in certain areas was but a cosmetic defect, since had the court done so there would have been nothing the defendant could have done to change the unchallengeable fact that the ordinance existed. *People v. Carnesi* (1971, Cal App 2d Dist) 16 Cal App 3d 863, 94 Cal Rptr 555, 1971 Cal App LEXIS 1645.

In an action by a window washer against the owners of an apartment building for injuries sustained while cleaning the outside of the building's windows, which had no window cleaning safety devices, after another worker by mistake removed weights from plaintiff's ladder, causing him to fall, the trial court did not err in refusing to permit the injured worker to introduce certain provisions of the Uniform Building Code which had been incorporated into the municipal building code for the city where the building was located. Such building code provisions were irrelevant, since the permit for the owners' building was issued prior to the code's effective date, even though the building was not completed until after such date. Statutes not in effect at the time of an accident have no relevance to a defendant's statutory duty of care. Moreover, the court was not required to take judicial notice of the code provisions in effect at the time of such permit or admit them into evidence; although a court may take judicial notice of municipal ordinances pursuant to Ev C § 452, and must do so if requested by a party, provided sufficient notice is given to adverse parties and the court is given sufficient information to enable it to take judicial notice of the matter, the injured worker failed to provide the court with the relevant ordinances which he sought to have judicially noticed. *Salinero v. Pon* (1981, Cal App 1st Dist) 124 Cal App 3d 120, 177 Cal Rptr 204, 1981 Cal App LEXIS 2203.

In proceedings concerning the adequacy of dental care provided by a county to indigent residents, the Court of Appeal could take judicial notice of a county resolution upgrading the standard of care provided. *Ev C § 452*, allows judicial notice of regulations and legislative enactments of public entities. The statute does not require that legislative action be taken by ordinance rather than resolution. Records of a county are also properly noticed under *Ev C § 452* (official acts of the state), since counties are legal subdivisions of the state. *Cooke v. Superior Court* (1989, *Cal App 3d Dist*) 213 *Cal App 3d* 401, 261 *Cal Rptr* 706, 1989 *Cal App LEXIS* 848, overruled *County of San Diego v. State of California* (1997) 15 *Cal 4th* 68, 61 *Cal Rptr 2d* 134, 931 *P2d* 312, 1997 *Cal LEXIS* 630 (disapproved on other grounds by *County of San Diego v. State of California* (1997) 15 *Cal 4th* 68, 61 *Cal Rptr 2d* 134, 931 *P2d* 312, 1997 *Cal LEXIS* 630).

A private corporation's summary of changes in federal regulations, not including the regulations themselves, is not an appropriate subject of judicial notice because it does not contain matters of common knowledge within the territorial jurisdiction of the court (*Ev C § 452*), and there is no other statutory basis for judicial notice of such information. *Carleton v. Tortosa* (1993, *Cal App 3d Dist*) 14 *Cal App 4th* 745, 17 *Cal Rptr 2d* 734, 1993 *Cal App LEXIS* 319, review denied (1993, *Cal*) 1993 *Cal LEXIS* 3609.

In determining that a San Francisco domestic partnership had been effectively terminated by filing a notice in San Francisco for ending a domestic partnership, the reviewing court took judicial notice, as permitted by *Ev C §§ 452, 459*, of a provision of the *San Francisco Administrative Code*. *Velez v. Smith* (2006, *Cal App 1st Dist*) 142 *Cal App 4th* 1154, 48 *Cal Rptr 3d* 642, 2006 *Cal App LEXIS* 1375, review denied *Velez (Elena) v. Smith (Krista)* (2006) 2006 *Cal. LEXIS* 14191.

Under *Ev C § 452*, the reviewing court took judicial notice of a copy of a report relating to proposed revisions of a jury instruction by the *Judicial Council of California's Advisory Committee on Civil Jury Instructions*. *Buell-Wilson v. Ford Motor Co.* (2008, *4th Dist*) 160 *Cal App 4th* 1107, 73 *Cal Rptr 3d* 277, 2008 *Cal App LEXIS* 349, modified, rehearing denied (2008, *Cal. App. 4th Dist.*) 2008 *Cal. App. LEXIS* 515, cert den (2009, U.S.) 130 *S. Ct.* 742, 175 *L. Ed. 2d* 515, 2009 *U.S. LEXIS* 8620, dismissed *Buell-Wilson (Benetta) v. Ford Motor Company* (2009, *Cal.*) 93 *Cal. Rptr. 3d* 536, 207 *P.3d* 1, 2009 *Cal. LEXIS* 4439.

In an action based on a manufacturer's failure to warn an air conditioning technician about the dangers of exposure to a refrigerant, the reviewing court took judicial notice, at the technician's request, of several regulations and regulatory interpretations of the federal Hazard Communication Standard by OSHA, as permitted by *Ev C § 452* and *Ev C § 453*; the manufacturer did not oppose the request. *Johnson v. American Std., Inc.* (2008, *Cal*) 2008 *Cal LEXIS* 3794.

3. Official Government Acts

A court may take judicial notice that under the laws of the United States and the regulations of the land office, no sales of public lands are made until the plat and field notes of the subdivision survey of the township in which they lie have been returned and approved. *Saunders v. Polich* (1967, *Cal App 4th Dist*) 250 *Cal App 2d* 136, 58 *Cal Rptr* 198, 1967 *Cal App LEXIS* 2087.

A statement of an individual legislator as to his intention, motive, or opinion regarding a particular piece of legislation is inadmissible as evidence, and where such a declaration was neither offered nor received as evidence in a trial court, its contents are ineligible for judicial notice. *Bragg v. Auburn* (1967, *Cal App 3d Dist*) 253 *Cal App 2d* 50, 61 *Cal Rptr* 284, 1967 *Cal App LEXIS* 2318.

Judicial notice may be taken of the official acts of the Executive Department of this state (*Ev Code § 452*; formerly CCP § 1875, subd 3). *Reimel v. Alcoholic Beverage Control Appeals Board* (1967, *Cal App 1st Dist*) 254 *Cal App 2d* 340, 62 *Cal Rptr* 54, 1967 *Cal App LEXIS* 1400.

A court may take judicial notice of proceedings before the *California Unemployment Insurance Appeals Board* and

the National Labor Relations Board. Pratt v. Film Technicians of Motion Picture & Television Industries (1968, Cal App 2d Dist) 260 Cal App 2d 545, 67 Cal Rptr 483, 1968 Cal App LEXIS 1887.

The status of a person as a licensed broker or salesman is a matter of public record of which a court can take judicial notice. *Fellom v. Adams (1969, Cal App 1st Dist) 274 Cal App 2d 855, 79 Cal Rptr 633, 1969 Cal App LEXIS 2125.*

Though courts will judicially notice the making of the California Debris Commission Report, known as the "Jackson Report," and the contents, they do not take judicial notice that everything said in the report is true. *Shaeffer v. State (1970, Cal App 3d Dist) 3 Cal App 3d 348, 83 Cal Rptr 347, 1970 Cal App LEXIS 1132.*

Courts are entitled to take judicial notice of the actions of the Secretary of the Interior and the Commissioner of the General Land Office of the United States, predecessor of the Bureau of Land Management; thus, a letter of transmittal of a departmental decision of the General Land Office, adjudicating rights under the Forest Lieu Lands Act, was entitled to judicial notice in a subsequent quiet title action involving the base lands concerned. *Jay v. Dollarhide (1970, Cal App 5th Dist) 3 Cal App 3d 1001, 84 Cal Rptr 538, 1970 Cal App LEXIS 1194, overruled Morris v. Thogmartin (1973, Cal App 5th Dist) 29 Cal App 3d 922, 105 Cal Rptr 919, 1973 Cal App LEXIS 1246.*

Where defendant by an appropriate interrogatory disclosed that she had been practicing medicine in California since a fixed date, the court would have been justified in taking judicial notice that before a license to practice medicine may be issued in this state an applicant must have completed a one-year internship (*B & P C § 2192*). *State Medical Education Bd. v. Roberson (1970, Cal App 2d Dist) 6 Cal App 3d 493, 86 Cal Rptr 258, 1970 Cal App LEXIS 1354.*

In litigation involving a particular bank's status as a national or state bank, the court may take judicial notice of a certificate of authority issued by the U.S. Comptroller of Currency to the bank, and of the fact of the nonexistence of any California corporation authorized to do a banking business under the name used by that bank, and may, in the absence of objection to the taking of such notice, deem the bank to have been a national banking association at all times material to the litigation. *Kozlowsky v. Westminster Nat. Bank (1970, Cal App 2d Dist) 6 Cal App 3d 593, 86 Cal Rptr 52, 1970 Cal App LEXIS 1362.*

In an action for damages resulting from an automobile transmission selector mechanism claimed to be defective, defendant's objection that the court could not take judicial notice of any part of the records of a Congressional hearing on equipment defects or failures in automobiles, including correction efforts and recall campaign, was properly overruled. *Marocco v. Ford Motor Co. (1970, Cal App 1st Dist) 7 Cal App 3d 84, 86 Cal Rptr 526, 1970 Cal App LEXIS 2137.*

Though courts take judicial notice of public records, they do not take notice of the truth of matters stated therein. *People v. Long (1970, Cal App 3d Dist) 7 Cal App 3d 586, 86 Cal Rptr 590, 1970 Cal App LEXIS 2193.*

It is a matter of judicial notice that, by virtue of the licensing powers of the State Horse Racing Board, racing associations have a quasi-monopoly and that the number of tracks in operation at any one time is severely limited. *Greenberg v. Hollywood Turf Club (1970, Cal App 2d Dist) 7 Cal App 3d 968, 86 Cal Rptr 885, 1970 Cal App LEXIS 2227.*

A court may take judicial notice of the provisions of a public utility's tariff filed with the *Public Utilities Commission. Dollar-A-Day Rent-A-Car Systems, Inc. v. Pacific Tel. & Tel. Co. (1972, Cal App 2d Dist) 26 Cal App 3d 454, 102 Cal Rptr 651, 1972 Cal App LEXIS 956.*

The record supported the trial court's judgment ordering a guardian to pay from an incompetent's estate charges incurred for her care by the Department of Mental Hygiene, where the court properly took judicial notice of rate charges determined by the director of the department pursuant to applicable statutes, where the department furnished the court with copies of the account of the incompetent as maintained in its official records, together with a declaration as to the

rates and scheduled costs in effect for various periods involved, and the application of such figures to the incompetent's account, and where there was no objection to the form in which such matters were presented. *Guardianship of Gridley* (1973, *Cal App 1st Dist*) 32 *Cal App 3d* 1053, 108 *Cal Rptr* 200, 1973 *Cal App LEXIS* 1039.

A death certificate is within the provision of *Ev C* § 452, that judicial notice may be taken of official acts of the legislative, executive, and judicial departments of a state and of 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. *People v. Terry* (1974, *Cal App 1st Dist*) 38 *Cal App 3d* 432, 113 *Cal Rptr* 233, 1974 *Cal App LEXIS* 1065.

Judicial notice could not be taken by an environmental impact report filed by a regional transportation agency, which was a creature of a county and the incorporated cities of that county, under *Ev C* § 452, authorizing judicial notice of official acts of legislative, executive, and judicial departments of the United States and of any state, since the acts of the agency could not be deemed to be acts of either the state or of one of its subdivisions. *Edna Valley Assn. v. San Luis Obispo County Etc. Coordinating Council* (1977, *Cal App 2d Dist*) 67 *Cal App 3d* 444, 136 *Cal Rptr* 665, 1977 *Cal App LEXIS* 1240.

In construing the powers and duties of the Governor under the California Uniform Criminal Extradition Act (*Pen C* § 1548 et seq.), courts may take judicial notice (*Ev C* § 452), of the fact that governors have, without challenge, for various reasons declined to honor extradition requests which have been in proper form. The contemporaneous administrative construction of a statute by those charged with its enforcement and interpretation is entitled to great weight, and courts will generally not depart from such construction unless it is clearly erroneous or unauthorized. *State of South Dakota v. Brown* (1978) 20 *Cal 3d* 765, 144 *Cal Rptr* 758, 576 *P2d* 473, 1978 *Cal LEXIS* 200.

In an action for injunctive and declaratory relief challenging the constitutionality of former *Pub Res C* § 6922 (now *Pub Res C* § 6912), enacted as part of the Geothermal Resources Act of 1967 (now the Geothermal Resources Act, *Public Resources Code*, §§ 6901-6925.2), the trial court, in ruling on a demurrer to the complaint, properly took judicial notice of various legislative materials consisting primarily of two major legislative committee reports on geothermal resources, the final legislative history of the act, excerpts from testimony given at public legislative hearings, and some correspondence directed to the governor's office recommending his signature on the act from the legislative analyst, a state agency, and an individual legislator. These materials are in the category of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (*Ev C* § 452.) *Post v. Prati* (1979, *Cal App 2d Dist*) 90 *Cal App 3d* 626, 153 *Cal Rptr* 511, 1979 *Cal App LEXIS* 1510.

An official publication of the California Department of Real Estate stating the general areas tested on the real estate brokers' examination and a department bulletin containing a revised code of ethics for real estate licensees are proper subjects of judicial notice as official acts of the executive department of the state (*Ev C* § 452). However, they could not be noticed on appeal of summary judgment granted in an action against a broker for professional negligence, where they were not before the trial court and the request for judicial notice in the appellate court was opposed. *Carleton v. Tortosa* (1993, *Cal App 3d Dist*) 14 *Cal App 4th* 745, 17 *Cal Rptr 2d* 734, 1993 *Cal App LEXIS* 319, review denied (1993, *Cal*) 1993 *Cal LEXIS* 3609.

In ruling on a demurrer by the California Coastal Commission to landowners' suits challenging development restrictions imposed under the terms of permits issued by the commission, the trial court properly took judicial notice of declarations of restrictions that were recorded by the landowners' predecessors in interest. The commission had explicitly crafted the declarations and required their recordation pursuant to the permits, and thus the documents were not prepared by a private party and merely on file with a state agency. Judicial notice of the official acts of a government department was proper under *Ev C* § 452. *Ojavan Invs. v. California Coastal Com.* (1994, *Cal App 2d Dist*) 26 *Cal App 4th* 516, 32 *Cal Rptr 2d* 103, 1994 *Cal App LEXIS* 681, rehearing denied *Ojavan Investors v. California Coastal Comm'n* (1994, *Cal App 2d Dist*) 1994 *Cal App LEXIS* 734, cert den *Ojavan Investors v. California Coastal Comm'n* (1995) 513 *US* 1148, 115 *S Ct* 1097, 130 *L Ed 2d* 1065, 1995 *US LEXIS* 1030.

Pursuant to *Ev C § 452*, judicial notice may be taken of official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States. Thus, in an action to declare an initiative measure that amended a county's local coastal program (LCP) invalid, in which plaintiffs alleged that the California Coastal Commission failed to comply with the California Environmental Quality Act (CEQA) in certifying the measure, the trial court properly took judicial notice of the certification by the Secretary of Resources, pursuant to *Pub Res C § 21080.5*, that commission review of original LCP submittals was the functional equivalent of CEQA review and a subsequent letter by the secretary containing a legal opinion that the certification issued for the commission's LCP certification activities extended to commission review of LCP amendments. *San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995, 1st Dist) 38 Cal App 4th 523, 45 Cal Rptr 2d 117, 1995 Cal App LEXIS 898, review denied *San Mateo County Coastal Landowners' Ass'n v. County of San Mateo* (1995, Cal.) 1995 Cal. LEXIS 7702.

In a personal injury action brought by several thousand people allegedly injured by the airborne release of hazardous material stored at a chemical company against the county for its failure to adequately regulate the company, the trial court properly sustained, without leave to amend, the county's demurrers to causes of action for allowing a public and private nuisance and allowing a dangerous condition to exist. *Gov C § 835*, permits suits against governmental entities for dangerous conditions of property, but only if the property is owned or controlled by the governmental entity (*Gov C § 830*). Similarly, a governmental entity may not be held liable for failing to abate a nuisance existing on private property. The property here was privately owned and the alleged nuisance also was private. Plaintiffs could recover on these theories, therefore, only if they could show the existence of some overriding mandatory statutory duty. As they failed to show a statutory duty, they failed to state these causes of action. *Washington v. County of Contra Costa* (1995, Cal App 1st Dist) 38 Cal App 4th 890, 45 Cal Rptr 2d 646, 1995 Cal App LEXIS 938, rehearing denied (1995, Cal App 1st Dist) 1995 Cal App LEXIS 937, review denied (1995, Cal) 1995 Cal LEXIS 6971.

In a malicious prosecution action arising from defendant's accusation that plaintiff, a coworker, engaged in sexual harassment and rude behavior, the trial court erred in taking judicial notice of factual findings adopted by the State Personnel Board that most of defendant's accusation were untrue. Although *Ev C § 452*, permits a trial court to take judicial notice of the records and files of a state administrative board, a court may not take judicial notice of the truth of a factual finding made in another action. *Fowler v. Howell* (1996, Cal App 2d Dist) 42 Cal App 4th 1746, 50 Cal Rptr 2d 484, 1996 Cal App LEXIS 182, review denied (1996, Cal) 1996 Cal LEXIS 3346.

Notice is taken of the Environmental Protection Agency's Office of Pesticides Programs, Pesticide Regulation Notice 96-4, *Notice 96-4*, as an "official act" of the federal government within the meaning of *Ev C § 452(c)*. *Etcheverry v. Tri-Ag Service, Inc.* (2000) 22 Cal 4th 316, 93 Cal Rptr 2d 36, 993 P2d 366, 2000 Cal LEXIS 981.

Court granted the request for judicial notice of excerpts of the legislative assembly journal and an excerpt of the state constitution; under *Ev C § 452*, the request was proper because the court was entitled to take judicial notice of the public and private official acts of the legislative, executive, and judicial departments of the state, and the court was also entitled to resort to appropriate books and documents of reference for aid in resolving issues. *De Asis v. Department of Motor Vehicles* (2003, Cal App 3d Dist) 112 Cal App 4th 593, 5 Cal Rptr 3d 231, 2003 Cal App LEXIS 1517, review denied *De Asis v. DMV* (2003, Cal) 2003 Cal LEXIS 10134.

In a workplace-injury action by the employee of a subcontractor, the reviewing court took judicial notice, at the employee's unopposed request, of the employer's bankruptcy filing and of the employee's workers' compensation filing. However, the court declined to take judicial notice of computer records of the employee's Workers' Compensation Appeals Board case history, health insurance claim forms, and medical records because there was no meaningful explanation as to why these items or facts were relevant. *Bell v. Greg Agee Construction, Inc.* (2004, Cal App 4th Dist) 125 Cal App 4th 453, 23 Cal Rptr 3d 33, 2004 Cal App LEXIS 2246, review denied *Bell v. Greg Agee Construction* (2005) 2005 Cal. LEXIS 2848.

Where the prosecution disputed the claim of an accused charged with possession of methamphetamine that the

accused was entitled to probation and drug treatment under Cal. Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, under *Ev C § 452(c)* the court took judicial notice of the ballot pamphlet for the proposition as showing the intent of the voters in passing an initiative measure. *Moore v. Superior Court* (2004, *Cal App 3d Dist*) 117 *Cal App 4th* 401, 12 *Cal Rptr 3d* 383, 2004 *Cal App LEXIS* 433.

Court of Appeal granted plaintiff's request which defendant opposed to take judicial notice of documents related to a failed legislative attempt to amend the Unfair Competition Law (UCL); the materials were properly subject to judicial notice and could be relied on in interpreting the UCL. *Lytwyn v. Fry's Electronics, Inc.* (2005, *Cal App 4th Dist*) 126 *Cal App 4th* 1455, 25 *Cal Rptr 3d* 791, 2005 *Cal App LEXIS* 267, dismissed (2007) 56 *Cal. Rptr. 3d* 472, 2007 *Cal. LEXIS* 2747.

In a neighbor's challenge to the issuance of a building permit, the court declined a request that the court take permissive judicial notice of a State Bar of California "attorney profile" of the neighbor. *Honig v. San Francisco Planning Dept.* (2005, *Cal App 1st Dist*) 127 *Cal App 4th* 520, 25 *Cal Rptr 3d* 649, 2005 *Cal App LEXIS* 348.

In addressing the standard partition rate used for analyzing breath tests, the reviewing court granted the People's request to take judicial notice of certain legislative history materials, as permitted by *Ev C §§ 452(d), 459*, including a report addressing the issue of whether the offense of driving under the influence of alcohol should be statutorily defined in terms of the concentration of alcohol found in the breath when breath analysis was used. *People v. McNeal* (2007, *4th Dist*) 155 *Cal App 4th* 582, 66 *Cal Rptr 3d* 212, 2007 *Cal App LEXIS* 1590, modified, rehearing denied (2007, *Cal. App. 4th Dist.*) 2007 *Cal. App. LEXIS* 1736, *aff'd* (2009, *Cal*) 2009 *Cal LEXIS* 6024.

In an action challenging a definition of "change of ownership" for purposes of ad valorem taxes, the reviewing court took judicial notice, under *Ev C §§ 452(h), 459*, of the legislature's Report of the Task Force on Property Tax Administration; of ballot materials for Propositions 13 and 58, as accepted indicia of the voters' intent and understanding of initiative measures; of legislative history; and of chaptered versions of Assembly Bill Nos. 25, 26, 205 and 2216. *Strong v. State Bd. of Equalization* (2007, *3d Dist*) 66 *Cal Rptr 3d* 657, 155 *Cal App 4th* 1182, 2007 *Cal App LEXIS* 1643, review denied *Strong (Michael V.) v. State Board of Equalization (Equality California)* (2008, *Cal.*) 2008 *Cal. LEXIS* 225.

Judicial notice on appeal was proper under *Ev C §§ 459(a), 452(c)* as to the history of legislation addressing fraud in the auto industry, which was relevant to a determination of whether such conduct violated public policy for purposes of a wrongful termination claim. *Casella v. Southwest Dealer Services, Inc.* (2007, *4th Dist*) 2007 *Cal App LEXIS* 2014.

Trial court did not err in denying, at the demurrer stage, healthcare provider's request under *Ev C § 452* and *Ev C § 453* for judicial notice of licenses indicating that another entity owned the facility; licenses did not negate complainant's allegation that healthcare provider ratified the sexual misconduct of an employee. *C.R. v. Tenet Healthcare Corp.* (2009, *2d Dist*) 169 *Cal App 4th* 1094, 87 *Cal Rptr 3d* 424, 2009 *Cal App LEXIS* 3, modified, rehearing denied *C. R. v. Tenet Healthcare Corp.* (2009, *Cal. App. 2d Dist.*) 2009 *Cal. App. LEXIS* 140.

4. Court Records and Rules of Court

In determining when a deposition was filed the trial court could take judicial notice of its own files and the appellate court could do the same. *Thornton v. Rhoden* (1966, *Cal App 2d Dist*) 245 *Cal App 2d* 80, 53 *Cal Rptr* 706, 1966 *Cal App LEXIS* 1449.

In ruling on a demurrer essentially founded on *res judicata*, a court may take judicial notice of a prior judgment in a different case, though such judgment or its content is not pleaded in the case, provided the judgment is appropriately drawn to the court's attention and the plaintiff had adequate notice and opportunity to be heard on the question of the effect of such judgment; and on the hearing of a demurrer to the complaint of an executor of a decedent's estate seeking recovery of money paid to the Department of Mental Hygiene under a statute later held to be unconstitutional, the trial

court properly took judicial notice of an earlier decree settling the first and final account and decree of final distribution of the estate approving such payment. *Bank of America v. Department of Mental Hygiene* (1966, Cal App 1st Dist) 246 Cal App 2d 578, 54 Cal Rptr 899, 1966 Cal App LEXIS 1059.

In an action to enforce alleged trusts, it was proper, both under *Ev C* §§ 452, 459 and under the law then existing, for the trial court, in ruling upon a demurrer based upon a statute of limitations, to take judicial notice of a similar action filed four years earlier and dismissed under former CCP § 581, when plaintiff failed to appear, and it was immaterial that, as thus dismissed, the issue was not res judicata. *Oeth v. Mason* (1967, Cal App 2d Dist) 247 Cal App 2d 805, 56 Cal Rptr 69, 1967 Cal App LEXIS 1739.

A dismissal under former CCP § 581, for the failure of plaintiff to appear in the action, did not determine the merits, and the only facts from that action of which judicial notice may be taken are that certain claims had been asserted by plaintiff, and a certain answer by defendant. *Oeth v. Mason* (1967, Cal App 2d Dist) 247 Cal App 2d 805, 56 Cal Rptr 69, 1967 Cal App LEXIS 1739.

A court may take judicial notice of its own records when ruling on a demurrer. *Nulaid Farmers Assn. v. La Torre* (1967, Cal App 1st Dist) 252 Cal App 2d 788, 60 Cal Rptr 821, 1967 Cal App LEXIS 1569.

Where attention has been called to the existence of a prior case, judicial notice of it may be taken. *Artucovich v. Arizmendiz* (1967, Cal App 2d Dist) 256 Cal App 2d 130, 63 Cal Rptr 810, 1967 Cal App LEXIS 1835.

In an action involving the powers and duties of a testamentary trustee the trial court properly took judicial notice of a prior decree of distribution rendered in the probate proceeding of the estate involved, where, even though the complaint in the present action did not refer to the prior decree, defendant requested that the court take judicial notice of the decree, and the decree described the powers and duties of the testamentary trustee. *Kaiser v. Gibson* (1968, Cal App 1st Dist) 264 Cal App 2d 319, 70 Cal Rptr 246, 1968 Cal App LEXIS 2088.

Defendant's conviction of possession of a firearm after having been convicted of a felony involving use of a firearm (*Pen C* § 12560) was error where no evidence was presented in the trial court to show that use of a firearm was involved in the previous offense of assault with a deadly weapon (*Pen C* § 245), and where taking judicial notice of the transcript of defendant's preliminary hearing on the prior charge, although permissible (*Ev C* §§ 452, 459), would deny defendant the right to trial by jury on an essential element of the crime charged. *People v. Billon* (1968, Cal App 1st Dist) 266 Cal App 2d 537, 72 Cal Rptr 198, 1968 Cal App LEXIS 1540.

A court may take judicial notice of all verified and unverified pleadings in a particular case and their history, including early superseded pleadings and exhibits incorporated therein, when exercising its judicial discretion in determining whether a defective pleading is susceptible of amendment to state a recognizable legal claim. *Hills Transp. Co. v. Southwest Forest Industries, Inc.* (1968, Cal App 2d Dist) 266 Cal App 2d 702, 72 Cal Rptr 441, 1968 Cal App LEXIS 1558.

In an equity action seeking to set aside the property provisions of prior interlocutory and final divorce decrees, in ruling on a demurrer it was proper for the trial court to take judicial notice of the records in the prior divorce action, where the complaint as amended made specific reference to the prior divorce action by name and case number, and in effect sought to make a collateral attack upon the judgment therein, and where such former proceedings were further reflected by true copies of the relevant portions thereof accompanying a memorandum in support of a demurrer and made a part of the instant record. *Morton v. Loveman* (1968, Cal App 2d Dist) 267 Cal App 2d 712, 73 Cal Rptr 623, 1968 Cal App LEXIS 1443.

In a mandamus proceeding by taxpayers to remedy the effects of allegedly wrongful property assessments made by an assessor, it was not error for the trial court to examine the transcript of the grand jury's investigation of the assessor, and to consider its contents as evidence, where defendants, by their answer, admitted that the transcript was in existence as a public record, thus making the testimony received by the grand jury as recounted in the transcript, and the assessor's

indictment pursuant thereto, subjects of which the trial court could properly take judicial notice. *Knoff v. San Francisco* (1969, *Cal App 1st Dist*) 1 *Cal App 3d* 184, 81 *Cal Rptr* 683, 1969 *Cal App LEXIS* 1268.

Both the trial court and a reviewing court may judicially notice documents in the file of the case wherein a demurrer is interposed, the trial court's own records, as well as the files of another case pending in the trial court. *Saltares v. Kristovich* (1970, *Cal App 2d Dist*) 6 *Cal App 3d* 504, 85 *Cal Rptr* 866, 1970 *Cal App LEXIS* 1355.

In a paternity suit, the superior court properly refused to admit into evidence a juvenile court file in which someone other than defendant was named as the child's father, and defendant was not prejudiced by the ruling where the court ruled that it would take judicial notice of the file and ordered that it remain as a part of the superior court records, to permit examination of the file by a higher court on appeal. *Gravert v. De Luse* (1970, *Cal App 3d Dist*) 6 *Cal App 3d* 576, 86 *Cal Rptr* 93, 1970 *Cal App LEXIS* 1360.

Though a trial court may properly take judicial notice of the records of any court of record of any state of the United States (*Ev C* § 452), it cannot take judicial notice of hearsay allegations as being true, just because they are part of a court record or file. A court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments. *Day v. Sharp* (1975, *Cal App 2d Dist*) 50 *Cal App 3d* 904, 123 *Cal Rptr* 918, 1975 *Cal App LEXIS* 1826.

On appeal by a railroad company from a damage judgment against it arising out of an accident at a railroad crossing, the reviewing court would not take judicial notice of charges in another action made against an expert witness, who testified against defendant, allegedly disclosing that the witness was an imposter, where defendant's counsel made no voir dire of the witness at trial, and where there appeared to be no reason why the information concerning the witness could not have been discovered previous to the running of the time for filing a motion for a new trial. While a court may take judicial notice of proceedings of a court of the state pursuant to *Ev C* § 452, whether or not the matter is to be considered on review is a question to be considered in light of principles governing review, and there was neither authority nor justification for remanding the matter to the trial court for a hearing. *Simmons v. Southern Pac. Transportation Co.* (1976, *Cal App 1st Dist*) 62 *Cal App 3d* 341, 133 *Cal Rptr* 42, 1976 *Cal App LEXIS* 1912.

Though authorized to do so by *Ev C* § 452 (discretionary judicial notice), an appellate court should generally not take judicial notice of records on file in a trial court action if, upon examination of the entire record, it appears that they have not been presented to and considered by the trial court in the first instance. *People v. Preslie* (1977, *Cal App 5th Dist*) 70 *Cal App 3d* 486, 138 *Cal Rptr* 828, 1977 *Cal App LEXIS* 1532.

Until the proper procedure was followed, the People were entitled to have stricken copies of, and all references to, an affidavit, search warrant, and return presented, on appeal, by a defendant who, convicted of murder after pleading guilty thereto, was seeking review of the lower court's denial of his motion to suppress evidence. Defendant's request to augment the record on appeal with such documents (Cal. Rules of Court, Rule 12), was first made, without explanation for the delay, by attaching them to his opening brief, and his alternative request to have the documents judicially noticed by the appellate court (*Ev C* § 452), was insufficient in that they were not certified and there were serious appellate issues as to whether the documents related to a substantive issue relied upon or adequately raised by defendant in the lower court and whether the lower court had considered them. *People v. Preslie* (1977, *Cal App 5th Dist*) 70 *Cal App 3d* 486, 138 *Cal Rptr* 828, 1977 *Cal App LEXIS* 1532.

Under *Ev C* § 452, a court may take judicial notice of a prior judgment in determining whether to sustain a demurrer based upon res judicata, provided that the court has been correctly apprised of the judgment and plaintiff is given notice and an opportunity to be heard as to the effect of the judgment. *Carroll v. Puritan Leasing Co.* (1978, *Cal App 2d Dist*) 77 *Cal App 3d* 481, 143 *Cal Rptr* 772, 1978 *Cal App LEXIS* 1232.

In California, records of a court come within the provisions of *Ev C* § 452, as permissive or discretionary matters that may be judicially noticed by the trial court. When a request to take judicial notice of such a record is made, *Ev C* §

453, then makes it conditionally mandatory that the court do so if sufficient notice is given to the adverse party and if the court is furnished with sufficient information to enable it to take notice of the matter. *People v. Maxwell* (1978, *Cal App 2d Dist*) 78 *Cal App 3d* 124, 144 *Cal Rptr* 95, 1978 *Cal App LEXIS* 1289.

Evidence of the records of conviction are included within records of "any court of this state" and therefore a juvenile court could have taken judicial notice of the minor's prior offenses under *Ev C* § 452, in computing a minor's commitment term based on such prior offenses, even though there was no specific evidence introduced to support a finding that the minor had any prior convictions. *In re Richard W.* (1979, *Cal App 5th Dist*) 91 *Cal App 3d* 960, 155 *Cal Rptr* 11, 1979 *Cal App LEXIS* 1642.

With respect to causes of action for malpractice, conspiracy, fraud, breach of fiduciary duty, and interference with prospective advantage alleged by a certified public accountant against the attorneys who had represented him in an investigation by the Securities Exchange Commission that preceded his indictment for securities fraud, the trial court, in ruling on defendant's demurrer, properly took judicial notice of pertinent facts stated in the appellate court's opinion and the judgment therein affirming the accountant's conviction of securities fraud, where all the causes of action alleged the accountant's indictment and consequential damages therefrom were proximately caused by the attorney's misconduct. The opinion and judgment could be viewed either as an official act of the judicial department of the United States subject to judicial notice under *Ev C* § 452, or as a record of the court of record of the United States subject to judicial notice under *Ev C* § 452. *Weiner v. Mitchell, Silberberg & Knupp* (1980, *Cal App 2d Dist*) 114 *Cal App 3d* 39, 170 *Cal Rptr* 533, 1980 *Cal App LEXIS* 2616.

Because the California State Bar is an administrative arm of the court only in its admissions and disciplinary functions, the record of a State Bar arbitration proceeding is not subject to judicial notice as a record of the acts of the judicial department under *Ev C* § 452. Further, although the State Bar has been described as a public corporation and akin to a state public body or agency, § 452, does not clearly make its matters subject to judicial notice as acts of either the legislative or executive department. *Brosterhous v. State Bar* (1995) 12 *Cal 4th* 315, 48 *Cal Rptr 2d* 87, 906 *P2d* 1242, 1995 *Cal LEXIS* 7342, modified (1996) 12 *Cal 4th* 651b, 1996 *Cal LEXIS* 509, mod 12 *Cal 4th* 651a.

To the extent that there was relevance to the ultimate question of whether defendant's counsel provided ineffective assistance in the murder prosecution, the Supreme Court of California could take judicial notice of its court records in the State Bar proceedings, which led to the suspension of defendant's counsel from practice. *In re Visciotti* (1996) 14 *Cal 4th* 325, 58 *Cal Rptr 2d* 801, 926 *P2d* 987, 1996 *Cal LEXIS* 6517, modified, rehearing denied (1997) 14 *Cal. 4th* 1089a, 1997 *Cal. LEXIS* 413, 97 *Cal. Daily Op. Service* 682, 97 D.A.R. 1073, Writ of cert. denied (1997) 521 U.S. 1124, 117 S. Ct. 2521, 138 L. Ed. 2d 1022, 1997 U.S. LEXIS 4146.

As part of the record in the court of another state, California appellate courts have discretion to take judicial notice of the opinion of a court of another state pursuant to the provisions of *Ev C* § 452. *Szetela v. Discover Bank* (2002, *Cal App 4th Dist*) 97 *Cal App 4th* 1094, 118 *Cal Rptr 2d* 862, 2002 *Cal App LEXIS* 4007, review denied (2002) 2002 *Cal. LEXIS* 5256, Writ of cert. denied (2003) 537 U.S. 1226, 123 S. Ct. 1258, 154 L. Ed. 2d 1087, 2003 U.S. LEXIS 1522, 71 U.S.L.W. 3551.

On appeal of an order entering default judgment, the appellate court was permitted to take judicial notice of the superior court's docket. *First American Title Co. v. Mirzaian* (2003, *Cal App 2d Dist*) 108 *Cal App 4th* 956, 134 *Cal Rptr 2d* 206, 2003 *Cal App LEXIS* 743.

In a liability insurer's declaratory action against a lessee insured, a lessor additional insured, and the lessor's liability and excess carriers, seeking contribution for the settlement of an underlying personal injury claim, although the appellate record did not include the joint trial readiness conference report, on appeal the court took judicial notice of such report pursuant to *Ev C* § 452. *St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.* (2003, *Cal App 4th Dist*) 111 *Cal App 4th* 1234, 4 *Cal Rptr 3d* 416, 2003 *Cal App LEXIS* 1404, rehearing denied (2003, *Cal App 4th Dist*) 2003 *Cal App LEXIS* 1402, review denied (2003, *Cal*) 2003 *Cal LEXIS* 9883.

In an action filed by a bankruptcy trustee against the debtor's insurer and the debtor's counsel hired by the insurer, alleging bad faith refusal to accept a pre-trial settlement offer in a personal injury action (against the debtor) and legal malpractice, pursuant to *Ev C § 452* the court took judicial notice of a counterclaim filed by the trustee in a declaratory action arising from the same facts filed by the insurer in federal court. *Wolkowitz v. Redland Ins. Co.* (2003, Cal App 2d Dist) 112 Cal App 4th 154, 5 Cal Rptr 3d 95, 2003 Cal App LEXIS 1474, review denied (2003, Cal) 2003 Cal LEXIS 9617.

In tobacco litigation, the court granted the companies' request for judicial notice of an opposition brief that plaintiffs filed with the California Supreme Court, which was relevant to defendants' argument that their summary judgment motions addressed all of the issues raised by the complaint, and four federal court orders, which were relevant to defendants' arguments on statutory immunity and preemption. *In re Tobacco Cases II* (2004, Cal App 4th Dist) 123 Cal App 4th 617, 20 Cal Rptr 3d 693, 2004 Cal App LEXIS 1800, rehearing denied (2004, Cal App 4th Dist) 2004 Cal App LEXIS 1801, aff'd (2007, Cal) 41 Cal 4th 1257, 63 Cal Rptr 3d 418, 163 P 3d 106, 2007 Cal LEXIS 8189.

Undisputed facts involving an estate were disclosed in a written decision after trial in the probate court. That decision was attached to a request for judicial notice filed by the testator's attorney in support of his demurrer to a subsequent malpractice action, and was properly considered in connection with the demurrer. *Osornio v. Weingarten* (2004, Cal App 6th Dist) 124 Cal App 4th 304, 21 Cal Rptr 3d 246, 2004 Cal App LEXIS 1961, modified, rehearing denied (2004) 2004 Cal. App. LEXIS 2160 .

In an action for child-support arrearages, the reviewing court granted the mother's request to take judicial notice of: (1) a prior unpublished decision concerning the same parties and subject matter; and (2) the trial court's subsequent order determining the appropriate amount of child support. *In re Marriage of Hubner* (2004, Cal App 2d Dist) 124 Cal App 4th 1082, 22 Cal Rptr 3d 549, 2004 Cal App LEXIS 2090.

Where a child's injuries were not shown to have been caused by abuse, voluntary dismissal of an appeal from a jurisdictional and dispositional order under *W & I C § 300* returning the child to the mother under a plan of family maintenance was proper; a jurisdictional and dispositional order was subject to modification pursuant to a proper showing of changed circumstances under *W & I C § 388*, and the basis for the requested dismissal was evidence of which the court could take judicial notice pursuant to *Ev C § 452*. *In re Karen G.* (2004, Cal App 4th Dist) 121 Cal App 4th 1384, 18 Cal Rptr 3d 301, 2004 Cal App LEXIS 1456.

Evidentiary stipulation between a city and an escrow company was properly considered to prove the extent of the escrow company's escheat liability and therefore to support a finding with regard to the company's auditor. *State of California ex rel. Harris v. PricewaterhouseCoopers* (2005, Cal App 1st Dist) 125 Cal App 4th 1219, 23 Cal Rptr 3d 529, 2005 Cal App LEXIS 73.

In an action challenging California's definition of marriage as limited to a man and a woman, intervention was properly denied to a fund that was created to defend those laws. The court took judicial notice of orders from six states denying requests by state legislators to intervene in same-sex marriage cases pursuant to *Ev C §§ 452* and *453*, but found none of the orders persuasive due to their lack of analysis. *City and County of San Francisco v. State of California* (2005, Cal App 1st Dist) 128 Cal App 4th 1030, 27 Cal Rptr 3d 722, 2005 Cal App LEXIS 669, review denied *San Francisco, City of v. State of Calif* (2005, Cal) 2005 Cal LEXIS 8002.

In a parental rights termination case, the appellate court judicially noticed a court minute order that revealed that approximately three months after the termination order, a home study of the prospective adoptive parents was completed and approved and that the child was adoptively placed; there was no requirement that the home study be completed before the juvenile court could terminate parental rights. *In re Marina S.* (2005, Cal App 2d Dist) 132 Cal App 4th 158, 33 Cal Rptr 3d 220, 2005 Cal App LEXIS 1344.

In an appeal from a decision regarding a claim for equitable indemnification, the reviewing court took judicial

notice of the dismissal of the underlying claim, which was in the superior court file. That file, by stipulation, was serving as the clerk's transcript. *Forensis Group, Inc. v. Frantz, Townsend & Foldenauer* (2005, Cal App 4th Dist) 130 Cal App 4th 14, 29 Cal Rptr 3d 622, 2005 Cal App LEXIS 929, review denied *Forensis Group v. Frantz, Townsend & (2005) 2005 Cal. LEXIS 9980*.

Court of Appeal denied plaintiff's request to take judicial notice of documents in other cases involving defendant, where the documents were not relevant to the issues on appeal. *Lytwyn v. Fry's Electronics, Inc.* (2005, Cal App 4th Dist) 126 Cal App 4th 1455, 25 Cal Rptr 3d 791, 2005 Cal App LEXIS 267, dismissed (2007) 56 Cal. Rptr. 3d 472, 2007 Cal. LEXIS 2747.

Juvenile court should have made a decision on the merits as to whether a grandmother was entitled to disclosure of her grandson's court records for use in her federal civil action, rather than improperly delegating the decision to the federal judge. The court noted that the juvenile court judge was not the presiding judge of the juvenile court, taking judicial notice under *Ev C* §§ 459 and 452 of who the presiding judge was. *In re Anthony H.* (2005, Cal App 4th Dist) 129 Cal App 4th 495, 28 Cal Rptr 3d 575, 2005 Cal App LEXIS 779.

In an appeal from the dismissal of a tort action alleging parental sexual abuse, the reviewing court took judicial notice under *Ev C* § 452(d) of the record in a prior action by the same plaintiff against her parents that was dismissed on statute-of-limitations grounds, as well as the prior versions of the complaint in the case at bar. *Aaronoff v. Martinez-Senftner* (2006, Cal App 3d Dist) 136 Cal App 4th 910, 39 Cal Rptr 3d 137, 2006 Cal App LEXIS 184, review denied *Aaronoff (V.J.) v. Martinez-Senftner (Gloria)* (2006) 2006 Cal. LEXIS 5568.

In the third lawsuit stemming from a minor automobile accident, the reviewing court took judicial notice under *Ev C* § 452(c) of its decision from an earlier appeal in one of the actions. *Kreeger v. Wanland* (2006, Cal App 3d Dist) 141 Cal App 4th 826, 46 Cal Rptr 3d 790, 2006 Cal App LEXIS 1144, review denied *Kreeger (Donald M.) v. Wanland (Donald M.)* (2006) 2006 Cal. LEXIS 12480.

In an action arising from criticism of a study into recovered memory of childhood abuse, the court took judicial notice under *Ev C* § 452 of court records that were the basis of a claim by the subject of the study for intrusion into private matters. The records in question were relevant to the question whether the subject presented sufficient evidence to establish a prima facie case that the critics improperly obtained private information about the subject from confidential court records. *Taus v. Loftus* (2007) 40 Cal 4th 683, 54 Cal Rptr 3d 775, 151 P3d 1185, 2007 Cal LEXIS 1896.

Doctrine of primary assumption of risk barred an injured skier's recovery from a resort and its employee who collided with the skier while both were skiing because the employee's aggressive skiing did not create a factual dispute as to recklessness. The reviewing court declined to take permissive judicial notice under *Ev C* §§ 452 and 459 of the resort's briefs in another case because the briefs were irrelevant; although the skier argued that the resort took inconsistent positions, the current case differed because the undisputed facts did not support any finding of recklessness. *Towns v. Davidson* (2007, Cal App 3d Dist) 147 Cal App 4th 461, 54 Cal Rptr 3d 568, 2007 Cal App LEXIS 145.

In a products liability action alleging that unsafe pharmaceutical drugs caused injury, the trial court properly declined to take judicial notice under *Ev C* § 452(d) of the denial of summary judgment in another case because judicial notice of a court's action cannot be used to prove the truth of the facts found and recited. *O'Neill v. Novartis Consumer Health, Inc.* (2007, Cal App 2d Dist) 147 Cal App 4th 1388, 55 Cal Rptr 3d 551, 2007 Cal App LEXIS 266, review denied *O'Neill (Pearl) v. Novartis Consumer Health, Inc.* (2007, Cal) 2007 Cal LEXIS 6858.

In a dispute regarding the disclosure of installment fees in an automobile insurance policy, the reviewing court granted the insurer's request pursuant to *Ev C* §§ 452(d) and 459 to take judicial notice of a stipulated dismissal of the appeal in another case. However, the court did not consider that appeal or its dismissal in deciding the case at bar. *Interinsurance Exchange of the Automobile Club v. Superior Court* (2007, Cal App 4th Dist) 148 Cal App 4th 1218, 56

Cal Rptr 3d 421, 2007 Cal App LEXIS 437, rehearing denied *Interinsurance Exchange of the Automobile Club v. S.C. (Williams et al.) (2007, Cal App 4th Dist) 2007 Cal App LEXIS 731*, review denied *Interinsurance Exchange of the Automobile Club v. S.C. (Williams) (2007, Cal) 2007 Cal LEXIS 6957*.

In discussing an attorney malpractice claim, the court took judicial notice, under *Ev C §§ 452(a), (d)(1), 459*, of its files and prior opinions relating to an underlying lawsuit. *Freeman v. Schack (2007, 4th Dist) 154 Cal App 4th 719, 64 Cal Rptr 3d 867, 2007 Cal App LEXIS 1406*, review denied *Freeman (Arleen) v. Schack (Alexander M.) (2007, Cal.) 2007 Cal. LEXIS 13390*.

In a dependency proceeding where the juvenile court terminated a father's parental rights over his child, the juvenile court's failure to inquire as to the Indian heritage of the child's mother constituted harmless error where exceptional circumstances existed to augment the record to include a form that the mother had filed in a separate dependency case involving the child's sibling or half-sibling in another juvenile court in which the mother denied having any Indian heritage; because both parents had in judicial proceedings denied having any Indian heritage, resolution of the matter by the appellate court did not thwart the purposes of the federal Indian Child Welfare Act, 25 *USCS 1901 et seq. In re A.B. (2008, 4th Dist) 2008 Cal App LEXIS 996*.

On appeal from order entering judgment on a settlement regarding an easement, reviewing court took judicial notice under *Ev C § 452(d)* of the complaint in a related action to quiet title. *Hines v. Lukes (2008, 2d Dist) 167 Cal App 4th 1174, 2008 Cal App LEXIS 1700*.

In appeal relating to attorney fees for enforcing a judgment, court took judicial notice under *Ev C § 452(d)* of its own opinions in underlying actions. *Globalist Internet Technologies, Inc. v. Reda (2008, 4th Dist) 167 Cal App 4th 1267, 2008 Cal App LEXIS 1706*.

Pursuant to *Ev C § 452(d)*, the court took judicial notice of the record from a prior appeal in the same case. *Ventimiglia v. Board of Behavioral Sciences (2008, 2d Dist) 168 Cal App 4th 296, 85 Cal Rptr 3d 423, 2008 Cal App LEXIS 2173*.

On appeal from criminal trial during which defense counsel resigned from the state bar with charges pending, reviewing court granted the state's motion under *Ev C § 459* and *Ev C § 452(h)* to take judicial notice of defense counsel's state bar records, including the letter of resignation, notation that counsel was not eligible to practice law, and the California Supreme Court's acceptance of the resignation. *People v. Vigil (2008, 6th Dist) 2008 Cal App LEXIS 2409*.

On a petition for habeas corpus challenging denial of parole, court took judicial notice under *Ev C § 452* and *Ev C § 459* of exhibits from an earlier challenge to the extent that the exhibits were not included with those accompanying the instant petition. *In re Gaul (2009, 2d Dist) 2009 Cal App LEXIS 24*.

In an appeal from denial of defendant juvenile's motion to be relieved of a sex-offender-registration requirement, reviewing court took judicial notice of the reporter's transcript of a hearing at which trial court indicated that two siblings, aged five and seven, were victims of an oral copulation count, and that count was added to the petition by interlineation and did not specify which sibling was the victim; although the transcript was not included as part of the record on appeal, it was submitted by defendant as an exhibit to a companion petition for writ of habeas corpus. *In re J.P. (2009, 1st Dist) 2009 Cal App LEXIS 147*.

In a criminal case arising from a collision, the court granted the People's request under *Ev C §§ 452(d), 459(a)* for judicial notice of a complaint filed by defendant against the victim. However, the court did not consider that complaint in disposing of an appeal on the issue of victim restitution because the claim was irrelevant to that issue. *People v. Millard (2009, 4th Dist) 175 Cal App 4th 7, 95 Cal Rptr 3d 751, 2009 Cal App LEXIS 994*, rehearing denied (2009, Cal. App. 4th Dist.) *2009 Cal. App. LEXIS 1239*, review denied *People v. Millard (Theodore Esau) (2009, Cal.) 2009 Cal. LEXIS 10699*.

In a disability rights case under California law, the reviewing court, on its own motion, obtained and took judicial notice, as permitted by *Ev C* §§ 452, 459, of the complaint against the same business in federal court and found that the federal complaint was based on federal question jurisdiction, not diversity jurisdiction. *Louie v. BFS Retail & Commercial Operations, LLC* (2009, 3d Dist) 2009 Cal App LEXIS 1797.

Court of appeal took judicial notice of an underlying personal injury and workers' compensation subrogation complaint in the files of the San Francisco Superior Court, as permitted by *Ev C* § 452(d). *Seabright Ins. Co. v. U.S. Airways, Inc.* (2010, 1st Dist) 2010 Cal App LEXIS 413.

Appeal from a minute order declining jurisdiction over a custody dispute became moot because of a custody settlement in another state, of which the appellate court took judicial notice pursuant to *Ev C* §§ 452, subd. (c), 459. *S.M. v. E.P.* (2010, 4th Dist) 2010 Cal App LEXIS 735.

Motion and declaration filed in the trial court after it issued the class certification order under appeal qualified for permissive judicial notice under *Ev C* § 452(d). *Faulkinbury v. Boyd & Associates, Inc.*, (2010, 4th Dist) 2010 Cal App LEXIS 964.

5. Foreign Law

The Soviet Union, as a civil law country, does not follow the law of state decisis and its decisions do not carry the precedential force attaching to decisions of courts in common law countries, though they are relevant as evidence of current Soviet practice in matters of inheritance involving aliens. *Estate of Larkin* (1966) 65 Cal 2d 60, 52 Cal Rptr 441, 416 P2d 473, 1966 Cal LEXIS 179.

Though the existence of a foreign law is a matter of judicial notice, in an action to establish a constructive trust that arose as the result of a trustee's violation of his fiduciary duties under an express trust allegedly created pursuant to the law of a foreign country, the existence of the foreign law is a question more efficiently determined in the first instance by a trial court after necessary investigation. *Ehret v. Ichioka* (1967, Cal App 2d Dist) 247 Cal App 2d 637, 55 Cal Rptr 869, 1967 Cal App LEXIS 1715.

In an action to establish a constructive trust that allegedly arose out of a trustee's violation of his duties under an express trust created under the laws of a foreign country, whether the foreign law barred the enforcement of the trust is, like the existence of the trust, a matter for determination by the trial court as part of its investigation of the foreign law. *Ehret v. Ichioka* (1967, Cal App 2d Dist) 247 Cal App 2d 637, 55 Cal Rptr 869, 1967 Cal App LEXIS 1715.

The law of West Germany, and the terms of existing agreements between West Germany and the United States, may be ascertained by judicial notice (*Ev C* §§ 452 and 454); such notice is available in the trial court and, independently, in the Court of Appeal (*Ev C* § 459), which is not bound by the trial court's determination. *Volkswagenwerk Aktiengesellschaft v. Superior Court* (1981, Cal App 1st Dist) 123 Cal App 3d 840, 176 Cal Rptr 874, 1981 Cal App LEXIS 2165.

In deciding the question raised on appeal, a reviewing court will ordinarily look only to the record made in the trial court. Further, while the reviewing court may take judicial notice of matters not before the trial court, it need not do so. An appellate court may properly decline to take judicial notice under *Ev C* §§ 452 and 459, of a matter that should have been presented to the trial court for its consideration in the first instance, e.g., an administrative record. *Brosterhous v. State Bar* (1995) 12 Cal 4th 315, 48 Cal Rptr 2d 87, 906 P2d 1242, 1995 Cal LEXIS 7342, modified (1996) 12 Cal 4th 651b, 1996 Cal LEXIS 509.

6. Matters of Common Knowledge

Even without the benefit of a professional affidavit on the subject, the judge was entitled in a personal injury case to take judicial notice that the subjective nature of a psychiatric examination to be conducted by defendant's doctor

forbade distractions to the patient by the presence of other persons, and to the doctor by having to cope with verbatim reporting. *Whitfield v. Superior Court of Los Angeles County* (1966, Cal App 2d Dist) 246 Cal App 2d 81, 54 Cal Rptr 505, 1966 Cal App LEXIS 1007.

Judicial notice may be taken of the fact that automobile manufacturers undertake large-scale advertising programs over television, radio, in newspapers, magazines and other media of communication in order to persuade the public to buy their products. *Ghera v. Ford Motor Co.* (1966, Cal App 1st Dist) 246 Cal App 2d 639, 55 Cal Rptr 94, 1966 Cal App LEXIS 1846.

A court will take judicial notice of the fact that tidal influence extends some distance up the San Joaquin River past the Colberg, Inc. *v. State* (1967) 67 Cal 2d 408, 62 Cal Rptr 401, 432 P2d 3, 1967 Cal LEXIS 227, cert den (1968) 390 US 949, 88 S Ct 1037, 19 L Ed 2d 1139, 1968 US LEXIS 2352.

In testing the sufficiency of a complaint by demurrer, a court may take judicial notice of facts that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute. *Daar v. Yellow Cab Co.* (1967) 67 Cal 2d 695, 63 Cal Rptr 724, 433 P2d 732, 1967 Cal LEXIS 259.

In a proposed class suit by taxicab users to recover overcharges imposed by defendant cab company over the past four years, allegations in the complaint that proof of a common set of facts would establish the right of every class member to recover, and that the rate of overcharge for each class member was uniform, could not be discountenanced by judicial notice of alleged facts to the contrary, such as defendant's custom of computing its fares on a combination of an initial premium rate, a mileage rate and a waiting-time rate, where such alleged facts were not of such common knowledge that they could not reasonably be the subject of dispute. *Daar v. Yellow Cab Co.* (1967) 67 Cal 2d 695, 63 Cal Rptr 724, 433 P2d 732, 1967 Cal LEXIS 259.

In reviewing the constitutionality of a county ordinance, such as one prohibiting the operation of gambling houses and from betting in other than specified places, a court may resort to its judicial knowledge of contemporaneous conditions. *Francis v. County of Stanislaus* (1967, Cal App 5th Dist) 249 Cal App 2d 862, 57 Cal Rptr 881, 1967 Cal App LEXIS 2297.

It may be noticed judicially that there is a well-established practice in the legal profession to ask for a stipulation that an answer to an original complaint may be deemed to be the answer to an amended complaint if defendant desires that it serve as such. *Bristol Convalescent Hospital v. Stone* (1968, Cal App 4th Dist) 258 Cal App 2d 848, 66 Cal Rptr 404, 1968 Cal App LEXIS 2480.

Judicial notice can be taken that the medical diagnosis of a lawyer is not always reliable. *Union Trust Life Ins. Co. v. Superior Court of Ventura County* (1968, Cal App 2d Dist) 259 Cal App 2d 23, 66 Cal Rptr 270, 1968 Cal App LEXIS 1941.

In a criminal prosecution, venue was properly established in Los Angeles County, where the evidence showed that the acts occurred in Venice; courts may take judicial notice that Venice, a part of the *People v. Harvath* (1969, Cal App 2d Dist) 1 Cal App 3d 521, 82 Cal Rptr 48, 1969 Cal App LEXIS 1300.

The trial court did not abuse its discretion in denying defendant's motion to dismiss a civil action for failure to bring it to trial within two years of filing (CCP § 583), where, though the affidavit of plaintiffs' attorney did not set forth facts showing an excuse for the delay, it could be presumed that the court commissioner conducting the hearing on the motion was informed that there has been various changes in attorneys and in the law firm representing plaintiffs and that the commissioner took judicial notice of such changes (Ev C § 452), where innumerable pleadings were filed by the parties to the action, where the condition of the trial court's calendar showed that it would have been useless for plaintiffs to attempt to obtain an accelerated trial date, and where denial of the motion would result in a trial on the merits of an action which both parties had announced they were ready to try. *Denham v. Superior Court of Los Angeles County* (1970) 2 Cal 3d 557, 86 Cal Rptr 65, 468 P2d 193, 1970 Cal LEXIS 292.

A trial court may take judicial notice of facts which are common knowledge within its territorial jurisdiction, of the location of local streets within city boundaries, and of the fact that a particular jurisdiction is an incorporated city. *People v. Vega* (1971, Cal App 2d Dist) 18 Cal App 3d 954, 96 Cal Rptr 391, 1971 Cal App LEXIS 1447.

If there is any doubt whatever either as to the fact itself or as to its being a matter of common knowledge, the doctrine of judicial notice is not appropriate, and evidence should be required. *San Luis Obispo Bay Properties, Inc. v. Pacific Gas & Elec. Co.* (1972, Cal App 2d Dist) 28 Cal App 3d 556, 104 Cal Rptr 733, 1972 Cal App LEXIS 1325.

On appeal from a criminal conviction, the Supreme Court could take judicial notice that defendant's appointed attorney served as city attorney at the time he acted as counsel for defendant; the identity of a public official is a proper subject for judicial notice (*Ev C* §§ 452, 459). *People v. Rhodes* (1974) 12 Cal 3d 180, 115 Cal Rptr 235, 524 P2d 363, 1974 Cal LEXIS 219.

A court has authority to take judicial notice of the distances and travel time between places (*Ev C* §§ 459, 452). *City of Anaheim v. Workers' Comp. Appeals Bd.* (1981, Cal App 4th Dist) 116 Cal App 3d 248, 172 Cal Rptr 92, 1981 Cal App LEXIS 1445.

The salary levels available to a supported spouse in a particular geographical area are not proper subjects for judicial notice in a proceeding to modify spousal support, since they are not matters of common knowledge, noticeable under *Ev C* § 452, or indisputable information noticeable under *Ev C* § 452. *In re Marriage of Prietsch & Calhoun* (1987, Cal App 1st Dist) 190 Cal App 3d 645, 235 Cal Rptr 587, 1987 Cal App LEXIS 1530.

In an action to enforce conditions on a charitable contribution, the court declined to take judicial notice of printouts from various websites maintained by the donee, a medical school. However tantalizing the public information may have been, the information was plainly subject to interpretation and for that reason was not subject to judicial notice. *L.B. Research & Education Foundation v. UCLA Foundation* (2005, Cal App 2d Dist) 130 Cal App 4th 171, 29 Cal Rptr 3d 710, 2005 Cal App LEXIS 948, review denied *L.B. Research & Education Foundation v. The UCLA Foundation* (2005, Cal) 2005 Cal LEXIS 9658.

Court rejected the State's request for judicial notice of the trial court's case management system procedures because they did not constitute facts that were of such common knowledge that they could not have reasonably been the subject of dispute, pursuant to *Ev C* § 452(g), and neither did the procedures appear to be capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy under § 452(h). *People v. Aegis Security Ins. Co.* (2005, Cal App 4th Dist) 127 Cal App 4th 569, 25 Cal Rptr 3d 623, 2005 Cal App LEXIS 360.

7. Indisputable Facts

A court may take judicial notice that June 25, 1964 fell on a Friday and that June 28, 1964, fell on the following *Espinoza v. Rossini* (1966, Cal App 5th Dist) 247 Cal App 2d 40, 55 Cal Rptr 205, 1966 Cal App LEXIS 934.

In trying an inverse condemnation action relating to the building of a dam across a river, the court may take judicial notice of the existence and geographical features of that river, and in doing so may resort to appropriate books or documents of reference (former CCP § 1875). *Dunbar v. Humboldt Bay Municipal Water Dist.* (1967, Cal App 3d Dist) 254 Cal App 2d 480, 62 Cal Rptr 358, 1967 Cal App LEXIS 1419.

Matters of scientific certainty are subject to judicial notice; and common knowledge and ordinary language support the court's recognition that smoke is visible, and that as a matter beyond scientific dispute, smoke is visible precisely because it contains incompletely oxidized materials. *McAllister v. Workers' Comp. Appeals Bd.* (1968) 69 Cal 2d 408, 71 Cal Rptr 697, 445 P2d 313, 1968 Cal LEXIS 250.

A court will judicially notice that the view that the use of marijuana, once begun, leads to excess is entertained by many eminent medical authorities, some of whom, while of the opinion that marijuana does not produce physical

addiction, believe that it does produce a serious degree of psychological dependence, that it encourages experimentation with other drugs, and that it may lead into addiction to narcotics, but that there are other respected medical authorities who are of the opinion that marijuana is harmless, is not habit forming and does not lead into addiction to narcotics, and that some of these authorities hold that marijuana is no more harmful, and possibly less harmful, than alcohol. *People v. Aguiar* (1968, Cal App 1st Dist) 257 Cal App 2d 597, 65 Cal Rptr 171, 1968 Cal App LEXIS 2484, cert den (1968) 393 US 970, 89 S Ct 411, 21 L Ed 2d 383, 1968 US LEXIS 261.

On appeal from a judgment for plaintiff in an action against a riding stable keeper for personal injuries received when plaintiff was thrown by a rented horse while riding on a bridle path, the appellate court could take judicial notice that plaintiff's position in hanging onto the saddle horn with her feet extended over the tail of the horse was not the normal riding position of persons riding along bridle paths. *Dorobek v. Ride-A-While Stables* (1968, Cal App 2d Dist) 262 Cal App 2d 554, 68 Cal Rptr 774, 1968 Cal App LEXIS 2345.

It is a matter for judicial notice that the narcotics problem is one of the most serious problems facing society today and particularly so as it relates to the youths of this state and nation. *In re Peeler* (1968, Cal App 3d Dist) 266 Cal App 2d 483, 72 Cal Rptr 254, 1968 Cal App LEXIS 1534.

In a prosecution for possession of marijuana, a quarter to a half-ounce of packaged marijuana was beyond the point where a court could take judicial notice that the quantity was usable. *People v. Locke* (1969, Cal App 4th Dist) 274 Cal App 2d 541, 79 Cal Rptr 367, 1969 Cal App LEXIS 2081.

In murder prosecutions involving extensive evidence on insulin, which was allegedly injected to kill, it was proper for the court to consult textbooks concerning the nature of the properties of insulin, as the court is entitled to take judicial notice on its own of the expertise of doctors testifying at the trial. *People v. Archerd* (1970) 3 Cal 3d 615, 91 Cal Rptr 397, 477 P2d 421, 1970 Cal LEXIS 234.

It is a matter of common knowledge that safety belts are effective in reducing fatalities and minimizing injuries in motor vehicle collisions. *Greyhound Lines, Inc. v. Superior Court of Shasta County* (1970, Cal App 3d Dist) 3 Cal App 3d 356, 83 Cal Rptr 343, 1970 Cal App LEXIS 1133, cert den (1970) 400 US 868, 91 S Ct 100, 27 L Ed 2d 108, 1970 US LEXIS 789.

It is a matter of general knowledge that a sudden shock can produce injury to the nervous system. *Windeler v. Scheers Jewelers* (1970, Cal App 1st Dist) 8 Cal App 3d 844, 88 Cal Rptr 39, 1970 Cal App LEXIS 2099.

Judicial notice may be taken of the fact that coronary arteriosclerosis amounts to "heart trouble." *Knowles v. Workers' Comp. Appeals Bd.* (1970, Cal App 2d Dist) 10 Cal App 3d 1027, 89 Cal Rptr 356, 1970 Cal App LEXIS 1913.

The court may take judicial notice of public trust burdens in quieting title to tidelands. *Marks v. Whitney* (1971) 6 Cal 3d 251, 98 Cal Rptr 790, 491 P2d 374, 1971 Cal LEXIS 215.

In appeals from independent proceedings resulting in revocation of two teachers' credentials as a result of their convictions for possession of marijuana, the court of appeal could not take judicial notice of the harmless nature of marijuana and its commonplace usage. Such propositions, based on various cited authorities, were not common knowledge, were subject to dispute, and therefore could not properly be judicially noticed as true; furthermore, the trial courts had not been requested to take judicial notice of the truth of such propositions, nor, with advanced notice to the opposite parties, had they actually done so (*Ev C* § 455). *Comings v. State Board of Education* (1972, Cal App 1st Dist) 23 Cal App 3d 94, 100 Cal Rptr 73, 1972 Cal App LEXIS 1194, 47 ALR3d 742.

The existence of the alleged preference arising out of the placement of the name of an incumbent first on the ballot is not a fact which is either of such common knowledge or which is subject to such accurate determination by resort to sources of reasonably indisputable accuracy that is not reasonably subject to dispute. Accordingly, it is not a fact properly the subject of judicial notice. *Mexican-American Political Asso. v. Brown* (1973) 8 Cal 3d 733, 106 Cal Rptr

12, 505 P2d 204, 1973 Cal LEXIS 251.

An excerpt from a well-known treatise on real property law, not being reasonably subject to dispute and being capable of immediate and accurate determination by reference to the cited text, is a proper subject of judicial notice (*Ev C* § 452). However, it could not be noticed on appeal of summary judgment granted in an action against a broker for professional negligence, where it was not before the trial court and the request for judicial notice in the appellate court was opposed. *Carleton v. Tortosa* (1993, Cal App 3d Dist) 14 Cal App 4th 745, 17 Cal Rptr 2d 734, 1993 Cal App LEXIS 319, review denied (1993, Cal) 1993 Cal LEXIS 3609.

The existence of a contract between private parties cannot be established by judicial notice under *Ev C* § 452 (facts and propositions not reasonably subject to dispute). Thus, in a wrongful termination action, the trial court erred in sustaining the employer's demurrer under *CCP* § 430.30, by taking judicial notice of the existence of a written employment contract between the parties. Although the employer claimed the employment was pursuant to a written contract, plaintiff claimed he was employed under an oral contract. Thus, there was a dispute that could not be resolved by resorting to "facts and propositions that are not reasonably subject to dispute." Plaintiff claimed the document that the employer contended was a contract was merely an offer by him to enter into a contract with the employer which it never accepted. He further contended he was not bound by the terms of the document because he signed it under duress. These contentions raised questions of fact that could not be resolved at the pleading stage of the case. Therefore, the sufficiency of plaintiff's complaint had to be tested without reference to the purported contract submitted by the employer. *Gould v. Maryland Sound Industries, Inc.* (1995, Cal App 2d Dist) 31 Cal App 4th 1137, 37 Cal Rptr 2d 718, 1995 Cal App LEXIS 56, review denied (1995, Cal) 1995 Cal LEXIS 3341.

Judicial notice under *Ev C* § 452, is intended to cover facts that are not reasonably subject to dispute and are easily verified. These include, for example, facts that are widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs, and the like or by persons learned in the subject matter. *Gould v. Maryland Sound Industries, Inc.* (1995, Cal App 2d Dist) 31 Cal App 4th 1137, 37 Cal Rptr 2d 718, 1995 Cal App LEXIS 56, review denied (1995, Cal) 1995 Cal LEXIS 3341.

At the unopposed request of a health care service plan, the court took judicial notice of health insurance policies that the plan issued to enrollees and found that an emergency care provider was not an intended beneficiary. The plan was not liable to pay the emergency care provider after the medical provider went out of business. *California Emergency Physicians Medical Group v. PacifiCare of California* (2003, Cal App 4th Dist) 111 Cal App 4th 1127, 4 Cal Rptr 3d 583, 2003 Cal App LEXIS 1376, rehearing denied (2003) 2003 Cal. App. LEXIS 1518, review denied *California. Emergency Physicians Medical Group v. Pacificare of California* (2003) 2003 Cal. LEXIS 9884.

In discussing an officer's reasonable suspicion that a driver failed to display a rear license plate, as required by *Veh C* § 5200(a), the reviewing court judicially noticed the department of motor vehicle's handbook of registration procedures, as permitted by *Ev C* § 452(h). *In re Raymond C.* (2006, Cal App 4th Dist) 145 Cal App 4th 1320, 52 Cal Rptr 3d 330, 2006 Cal App LEXIS 2007, modified, rehearing denied (2006) 2006 Cal. App. LEXIS 2008, aff'd (2008) 45 Cal. 4th 303, 86 Cal. Rptr. 3d 110, 196 P.3d 810, 2008 Cal. LEXIS 13743, abrogated as stated *People v. Dean* (2007, 1st Dist) 158 Cal App 4th 377, 69 Cal Rptr 3d 770, 2007 Cal App LEXIS 2075.

In a case in which plaintiffs who received fertility treatments at a fertility clinic in the late 1980s sued university regents and a medical center, alleging that clinic doctors stole human genetic material from them, the trial court erred in taking judicial notice of news articles and press releases concerning the clinic's problems; the trial court could not rely on judicial notice of the media reports to support an inference plaintiffs had knowledge of their injury because such matters were reasonably subject to dispute and therefore required formal proof. *Unruh-Haxton v. Regents of University of California* (2008, 4th Dist) 162 Cal App 4th 343, 76 Cal Rptr 3d 146, 2008 Cal App LEXIS 605.

To the extent that plaintiffs in consolidated products liability actions asked an appellate court to take judicial notice of a material change in factual circumstances since their appeal was taken, which was based on documents submitted in

support of and opposition to plaintiffs' motions to lift a stay of proceedings in the trial court, the appellate court could not do so because plaintiffs cited no authority suggesting that declarations submitted in support of and opposition to a motion fell into the category of facts and propositions that were not reasonably subject to dispute and were capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. *Guimei v. General Electric Co.* (2009, 2d Dist) 2009 Cal App LEXIS 427.

8. Judicial Notice Denied

Under *Ev C* §§ 452, subd. (c), 459 and *CCP* § 909, the court denied requests for judicial notice as to matters that either were not part of the administrative record or were unnecessary to the resolution of the appeal or both. *Health First v. March Joint Powers Authority* (2009, 4th Dist) 174 Cal App 4th 1135, 96 Cal Rptr 3d 290, 2009 Cal App LEXIS 918, review denied *Health First v. March Joint Powers Authority (Tesco Stores West, Inc.)* (2009, Cal.) 2009 Cal. LEXIS 8780.

Denial of a request for judicial notice of scientific studies under *Ev C* §§ 452, subd. (h), 453 was not prejudicial in light of an admission that the studies did not address a disputed point. *Californians for Pesticide Reform v. California Dept. of Pesticide Regulation* (2010, 3d Dist) 184 Cal App 4th 887, 2010 Cal App LEXIS 689.

In an appeal from a sexually violent predator proceeding, the court did not take judicial notice under *Ev C* § 452, subd. (c), of two background information letters that postdated the trial and were not made part of the record on appeal. The court explained that although it could have taken judicial notice of the existence, content, and authenticity of the letters, doing so would not have established the truth of critical factual matters asserted in them. *People v. Castillo* (2010, Cal) 2010 Cal LEXIS 4883.

9. Judicial Notice Taken

Where defendant was absent for the return of a criminal verdict, the court of appeal took judicial notice under *Ev C* §§ 452, subd. (h), 459, subd. (a), of the fact that the courthouse was approximately 39 miles from the city where defendant lived. *People v. Traugott* (2010, 4th Dist) 2010 Cal App LEXIS 624.