

# NY CLS CPLR R 4511

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***New York***

***Consolidated Laws Service*** >

***Civil Practice Law And Rules (Arts. 1 — 100)*** >

***Article 45 Evidence (§§ 4501 — 4551)***

## **R 4511. Judicial notice of law.**

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**(a)** When judicial notice shall be taken without request. Every court shall take judicial notice without request of the common law, constitutions and public statutes of the United States and of every state, territory and jurisdiction of the United States and of the official compilation of codes, rules and regulations of the state except those that relate solely to the organization or internal management of an agency of the state and of all local laws and county acts.

**(b)** When judicial notice may be taken without request; when it shall be taken on request. Every court may take judicial notice without request of private acts and resolutions of the congress of the United States and of the legislature of the state; ordinances and regulations of officers, agencies or governmental subdivisions of the state or of the United States; and the laws of foreign countries or their political subdivisions. Judicial notice shall be taken of matters specified in this subdivision if a party requests it, furnishes the court sufficient information to enable it to comply with the request, and has given each adverse party notice of his intention to request it. Notice shall be given in the pleadings or prior to the presentation of any evidence at the trial, but a court may require or permit other notice.

**(c)** Determination by court; review as matter of law. Whether a matter is judicially noticed or proof is taken, every matter specified in this section shall be determined by the judge

or referee, and included in his or her findings or charged to the jury. Such findings or charge shall be subject to review on appeal as a finding or charge on a matter of law.

**(d)** Evidence to be received on matter to be judicially noticed. In considering whether a matter of law should be judicially noticed and in determining the matter of law to be judicially noticed, the court may consider any testimony, document, information or argument on the subject, whether offered by a party or discovered through its own research. Whether or not judicial notice is taken, a printed copy of a statute or other written law or a proclamation, edict, decree or ordinance by an executive contained in a book or publication, purporting to have been published by a government or commonly admitted as evidence of the existing law in the judicial tribunals of the jurisdiction where it is in force, is prima facie evidence of such law and the unwritten or common law of a jurisdiction may be proved by witnesses or printed reports of cases of the courts of the jurisdiction.

## History

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Add, L 1962, ch 308; amd, L 1962, ch 315, § 1, eff Sept 1, 1963; L 2018, ch 516, § 1, effective December 28, 2018; L 2019, ch 223, § 1, effective December 28, 2018.

Annotations

## Notes

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### Prior Law:

Earlier statutes: CPA §§ 344–a, 380, 380–a, 381; CCP §§ 932, 941–a.

### Advisory Committee Notes:

This rule represents an expansion of CPA § 344-a which permitted, but did not require, the court to take judicial notice of the law of other states, private acts of this state or of Congress, ordinances, resolutions, by-laws or proceedings of governing bodies of municipalities of this

state, and rules or regulations of various executive departments, boards and officers of this state and its subdivisions and of the United States.

Discretion to refuse to take judicial notice of the law of sister-states seems clearly unwarranted. Cf. *Pfleuger v Pfleuger*, 304 NY 148, 152, 106 NE2d 495, 496–97 (1952). The law of other states is determinable almost as easily as the law of the United States and every lawyer should be capable of finding it. Twenty-six states and territories have adopted section 1 of the Uniform Judicial Notice of Foreign Law Act which provides, “Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States.” Other states, while not adopting the uniform rule have, in this respect, followed it. See the statutes collected in Morgan, Maguire & Weinstein, *Cases and Materials on Evidence* 52–55 (1957); see also Uniform Rules of Evidence, Rule 9.

The discretionary nature of the former New York statute created a serious dilemma for the careful lawyer who must have assumed that the court would not exercise its discretion to take judicial notice. This meant that he would have to come to court prepared to prove the law of a sister-state, observing all the rules of evidence applicable to proof of facts. This rule follows the Uniform Judicial Notice of Foreign Law Act and the Uniform Rules of Evidence in providing that the common law and public statutes of states, territories and other jurisdictions of the United States shall be judicially noticed.

This rule, however, does not require the judge to take judicial notice of private acts and resolutions, ordinances and regulations of political subdivisions and the laws of foreign countries, since the judge may not be aware of the existence of such laws and regulations; moreover, they may not be readily available to him. Insofar as he has discretion to notice them the former law is unchanged. If, however, a litigant requests the judge to take judicial notice and furnishes him with sufficient information to reach a decision, he must take judicial notice. The phrase “ordinance, resolution, by-law, rule or proceeding” of the former statute is encompassed by “ordinances and regulations” of this rule. Similarly, “governmental subdivisions” covers the

former terms “city, county, town or village” and “officers” and “agencies” includes “public board, agency or officer.”

Under both CPA § 344-a and § 3 of the Uniform Judicial Notice of Foreign Law Act the common law had been changed so that the question of what constitutes the law was one for the judge and not for the jury. Thus, the only effect of the judge's failure to take judicial notice was that he bound himself to observe the rules of evidence in reaching a conclusion on matters of foreign law. He might not have then read a law review article or treatise on the point, but must have obtained his information from public decisions, statutes and from expert testimony heard in open court. Under this rule, the judge, if he is unfamiliar with the legal system of a foreign country, could require experts on foreign law to testify and be cross-examined. This is the same discretion given to him under former § 344-a. If the parties fail to submit testimony required by him, the judge need only find, in the words of this rule, that there has not been “sufficient information to enable . . . [him] to comply with the request.” Cf. *Wagner v Derecktor*, 306 NY 386, 391–92, 118 NE2d 570, 573 (1954). In contrast to the former uncontrolled discretion, a standard is provided by this rule to guide both judge and attorneys in determining when judicial notice should be taken.

It is apparent that in any litigation of substance, attorneys will seek out foreign law experts both as advisors to themselves and in order to insure that the court will properly evaluate their position. Nevertheless, there are many cases in New York involving small sums or nonaffluent parties where it is important that expenses be minimized if justice is to be done. See Nussbaum, *Proof of Foreign Law in New York: A Proposed Amendment*, 57 Colum L Rev 348 (1957). This rule better accomplishes this purpose than did the former statute.

**That portion of subd (a)** of this rule from “and of the official compilation” to “an agency of the state” refers practitioners and the courts to the official compilation provided for by §§ 102–105 of the Executive Law and conforms to § 106 of that law regarding the proof of any code, rule or regulation contained in such compilation. The last eight words of subd (a) replace certain

provisions in the Consolidated Laws that have been repealed. See former County Law § 307; former Optional County Government Law, §§ 301(13), 1143, 1209(13), 1252.

**The last sentence in subd (b)**, dealing with notice, is taken from rule 9 of the Uniform Rules. See Committee on the Revision of the Law of Evidence, Report to the Supreme Court of New Jersey 20 (May 25, 1955). **Subd (b)** replaces paragraph D of former § 344-a. The former law implicitly required pleading but permitted the court to waive the requirement. Cf. *Greiner v Freund*, 386 App Div 996, 997, 144 NYS2d 766, 767 (1st Dept 1955). The notice requirement under this rule may be waived by the judge since subd (b) gives him power to take judicial notice without request and, therefore, without notice. **Subd (c) and (d)** are the same as paragraphs B and C of former § 344-a, respectively, with minor language changes.

In view of the breadth of this provision, former § 380-a, which dealt with proof of rules, orders or regulations of the New York State war council, and § 381, which dealt with proof of colonial statutes, have been omitted as unnecessary. Judicial notice should be taken of these orders, regulations and statutes.

While this rule is essentially the same as that recommended by the California Law Revision Commission (Recommendation and Study Relating to Judicial Notice of the Law of Foreign Countries I-9 (Feb. 1, 1957)), the advisory committee decided not to adopt the following recommendation of that Commission: If a court is unable to determine what the law of a foreign country or a political subdivision of a foreign country is, the court may, as the ends of justice require, either apply the law of this State if it can do so consistently with the Constitution of this State and of the United States or dismiss the action without prejudice.

This proposal has merit, but the problem seems, at this time, best left for solution through case law development. Cf., e. g., *Leary v Gledhill*, 8 NJ 260, 84 A2d 725 (1951).

## **Editor's Notes**

**Laws 2019, ch 223, § 3**, eff December 28, 2018, provides:

§ 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2018, amending the civil practice law and rules relating to judicial notice of an image, map, location, distance, calculation, or other information taken from a web mapping service, as proposed in legislative bills numbers S. 9061 and A. 11191, takes effect.

### **Amendment Notes**

**The 2018 amendment by ch 516, § 1**, added (c); redesignated former (c) and (d) as (d) and (e); and added “or her” in the first sentence of (d).

**The 2019 amendment by ch 223, § 1**, deleted former (c); and redesignated former (d) and (e) as (c) and (d).

### **Commentary**

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#### **PRACTICE INSIGHTS:**

#### **Using Judicial Notice Provisions to Admit Routine Diagrams, Maps, and Other Useful Internet-Based Information**

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#### **INSIGHT**

Criminal practitioners often find it necessary to prepare diagrams, maps, images, and distance calculations regarding the scene of a crime in order to assist witness testimony at a trial, or even at a hearing. Under provision added to the CPLR in 2018, this task may become much easier, as relevant images and information can be copied or projected from web-based mapping services simply upon judicial notice, rather than by calling a witness.

#### **ANALYSIS**

**Counsel should take advantage of judicial notice provisions to admit diagrams, maps, and distance calculations.**

Well in advance of trial, counsel should seek to identify and prepare diagrams, maps, images, and any distance calculations that might be relevant to the defendant's case. A modicum of familiarity with Google maps will allow counsel to identify the relevant images and maps, to expand and print them, and, where helpful, to calculate distances from one location to another. Satellite images may also be useful to show the street layout and structures in the area and to superimpose distances. Google maps and other websites also provide ground-level images of structures that may be useful to a jury. All of these exhibits can now be admitted under subdivision (c) of CPLR 4511, which provides that a court "shall" take judicial notice of such exhibits, subject to the opponent's opportunity to rebut the accuracy of the information they contain by credible and reliable evidence.

Where this type of evidence is offered by an opponent, counsel should be sure to check the accuracy of the information. Issues may arise with regard to the general reliability of the website or differences between the maps or diagrams as they appear in the proposed exhibit and the area as it existed at the time of the events that are the subject of the trial. Like other photos of the scene, both satellite and ground-level images may misleadingly depict lines of sight depending on the vehicles and foliage present, or absent, when the images were taken. Thoughtful review and investigation is important to avoid prejudicial or misleading images from being admitted through this new routine procedure.

**Counsel must be sure to provide timely notice when offering such information, and to make a timely objection in advance of trial where inaccurate evidence is offered against a client.**

CPLR 4511(c) requires compliance with a new procedure for obtaining judicial notice, specific to this type of evidence. Proponents must provide the information at least 30 days in advance of the relevant trial or hearing, something that may be problematic, particularly where counsel has a heavy case load and the defendant is likely to plead guilty, rather than go to trial. Counsel

must prepare a notice stating the proponent's intention to seek judicial notice of the relevant maps, images, or information and providing a copy of the information or images or at least "specifying the internet address at which such image or information may be inspected." Counsel receiving such notice is under an equally important obligation to object 10 days before the trial or hearing at which the item is sought to be introduced, stating the ground for the objection.

While these new procedures are likely to streamline the process of admitting these important exhibits, close attention to the information contained in them is important to avoid misleading information or images from reaching a jury.

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## **I. Under CPLR**

### **1. Generally**

Court of Appeals could properly take notice of facts which were recited in Supreme Court decision from which no appeal was filed and which both Supreme Court and Appellate Division properly took into account, even though facts might be “outside the record.” *Reed v Federal Ins. Co.*, 71 N.Y.2d 581, 528 N.Y.S.2d 355, 523 N.E.2d 480, 1988 N.Y. LEXIS 614 (N.Y. 1988).

A finding of fact, although not embodied in the formal decision of the court, is nevertheless a part of and enters into the judgment and the parties have the right to rely upon it. Findings of fact and conclusions of law made in a prior action are within the doctrine of res judicata providing they are relevant and material to the issues determined in the prior action, and a judgment has been entered thereon. *Zizzi v Zizzi*, 33 A.D.2d 926, 306 N.Y.S.2d 961, 1970 N.Y. App. Div. LEXIS 5827 (N.Y. App. Div. 3d Dep't), app. denied, 27 N.Y.2d 481, 1970 N.Y. LEXIS 1955 (N.Y. 1970).

Although some burden is placed on the courts by the requirement of CPLR 4511 (subd [a]) that judicial notice be taken of the laws of sister States "without request", the bar has a responsibility to advocate vigorously the application of the law of a sister State and a court should not hesitate to call on counsel to aid in obtaining the information necessary to inform itself of the applicable law. *Government Employees Ins. Co. v Sheerin*, 65 A.D.2d 10, 410 N.Y.S.2d 641, 1978 N.Y. App. Div. LEXIS 12881 (N.Y. App. Div. 2d Dep't 1978).

Since the standard of care of an owner of lands who opens them for public use is imposed upon the State by statute pursuant to Gen Oblig Law § 9-103, in an action for damages by a claimant who was injured at a public campsite after a bridge guardrail on which she was seated collapsed, the trial court was bound to take judicial notice of it. Public policy prohibits the application to the State of a lesser standard of care than that required by the statute simply because the State failed to assert the statutory standard at trial. *Sega v State*, 89 A.D.2d 412, 456 N.Y.S.2d 856, 1982 N.Y. App. Div. LEXIS 18397 (N.Y. App. Div. 3d Dep't 1982), *aff'd*, 60 N.Y.2d 183, 469 N.Y.S.2d 51, 456 N.E.2d 1174, 1983 N.Y. LEXIS 3419 (N.Y. 1983).

In action for rescission of sale of real estate brought after purchaser discovered that noisy rock-crushing operation existed on neighboring property, court properly refused to take judicial notice of record of park agency proceedings involving operation where agency ruling contained findings of fact. *Sleasman v Sherwood*, 212 A.D.2d 868, 622 N.Y.S.2d 360, 1995 N.Y. App. Div. LEXIS 1387 (N.Y. App. Div. 3d Dep't 1995).

In trial involving dispute as to whether plaintiff's decedent gave certain sums of money to defendants by way or loan or by way of gift, decedent's affidavit characterizing moneys as loaned, which was marked as "court exhibit" and read to jury by plaintiff's counsel in summation but not introduced in evidence, was not admissible as judicially noticeable court record merely because it was part of court file; thus, jury's request during deliberations to see affidavit should have been denied. *Ptasznik v Schultz*, 247 A.D.2d 197, 679 N.Y.S.2d 665, 1998 N.Y. App. Div. LEXIS 11838 (N.Y. App. Div. 2d Dep't 1998).

Judicial notice under N.Y. C.P.L.R. § 4511 of the definition of diagnosis and procedure codes adopted by the United States Department of Health and Human Services (HHS) is appropriate because the codes are of sufficient authenticity and reliability. *Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.*, 61 A.D.3d 13, 871 N.Y.S.2d 680, 2009 N.Y. App. Div. LEXIS 394 (N.Y. App. Div. 2d Dep't 2009).

In a no-fault action pursuant to N.Y. Ins. Law § 5106, while judicial notice under N.Y. C.P.L.R. § 4511 of the definition of diagnosis and procedure codes adopted by the United States Department of Health and Human Services (HHS) was appropriate because the codes were of sufficient authenticity and reliability, the insurer could not establish that a hospital was not entitled to benefits because the insurer did not submit medical evidence that a diagnosis of, inter alia, heart damage caused by alcoholism was not caused or exacerbated by an automobile accident. *Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.*, 61 A.D.3d 13, 871 N.Y.S.2d 680, 2009 N.Y. App. Div. LEXIS 394 (N.Y. App. Div. 2d Dep't 2009).

Defendants' motion for dismissal based upon taking judicial notice of French law was not strictly barred by the single motion rule when considered in conjunction with the rule governing judicial notice, as defendants sought to provide the court with the missing authority identified by the court in its denial of the prior motion. *Simon v FrancInvest, S.A.*, 192 A.D.3d 565, 146 N.Y.S.3d 9, 2021 N.Y. App. Div. LEXIS 1852 (N.Y. App. Div. 1st Dep't), app. dismissed, 37 N.Y.3d 1005, 174 N.E.3d 698, 152 N.Y.S.3d 673, 2021 N.Y. LEXIS 1828 (N.Y. 2021).

A court may take judicial notice of a record in the same court of the proceeding pending before it. *B. v B.*, 66 Misc. 2d 227, 320 N.Y.S.2d 843, 1971 N.Y. Misc. LEXIS 1817 (N.Y. Fam. Ct. 1971).

Since, under CPLR 4511(a), the court is obliged to take judicial notice of the laws of every territory of the United States, such nonforum law is to be treated as if it were a question of law. *El San Juan Hotel Corp. v Koenig*, 66 Misc. 2d 715, 321 N.Y.S.2d 665, 1971 N.Y. Misc. LEXIS 1662 (N.Y. Civ. Ct. 1971).

Parole detainee did not sustain his burden of supplying sufficient facts for issuance of writ of habeas corpus where he did not attach to his petition for habeas corpus either board of parole form 9013 or minutes of preliminary hearing, and where detainee failed to attach to petition copy of parole violation warrant or to explain why he could not do so. *People ex rel. Ayers v Lombard*, 87 Misc. 2d 355, 385 N.Y.S.2d 242, 1976 N.Y. Misc. LEXIS 2214 (N.Y. County Ct. 1976), *aff'd*, 55 A.D.2d 1051, 391 N.Y.S.2d 242, 1977 N.Y. App. Div. LEXIS 10418 (N.Y. App. Div. 4th Dep't 1977).

Court could take judicial notice of notice of city marshal's sale published in newspaper. *Grebow v City of New York*, 173 Misc. 2d 473, 661 N.Y.S.2d 441, 1997 N.Y. Misc. LEXIS 278 (N.Y. Sup. Ct. 1997).

Court could not take judicial notice of a process server's affidavit in a commercial holdover proceeding because the date and time when the process server claimed to have made service on the tenant was not a matter of general knowledge. *Cobble Hillbillies, LLC v Interior Design*, 782 N.Y.S.2d 600, 4 Misc. 3d 987, 2004 N.Y. Misc. LEXIS 1290 (N.Y. Civ. Ct. 2004).

A court has the power to take judicial notice of its own prior proceedings. *In re A.R.*, 309 A.D.2d 1153, 764 N.Y.S.2d 746, 2003 N.Y. App. Div. LEXIS 10212 (N.Y. App. Div. 4th Dep't 2003).

Court took judicial notice pursuant to N.Y. C.P.L.R. 4511(a) of the DSM-IV in a petition seeking an order of retention by a psychiatric hospital with respect to a patient pursuant to N.Y. Mental Hyg. Law § 9.27, as several terms defined in the New York Mental Hygiene Law depended on

definitions found in the “most recent edition” of the DSM-IV, including N.Y. Mental Hyg. Law § 1.03(52), (53), and (54), and a designated mental illness diagnosis was further defined as a DSM-IV diagnosis, pursuant to N.Y. Comp. Codes R. & Regs. tit. 14, §§ 512.4 and 587.4(a)(5); accordingly, in order to determine if a patient had a mental disorder, a court was required to take judicial notice of and apply the DSM-IV. *Matter of William A.*, 818 N.Y.S.2d 766, 13 Misc. 3d 367, 2006 N.Y. Misc. LEXIS 1989 (N.Y. Sup. Ct. 2006).

A jury is not required to decide issues of fact upon which choice of law depends when that choice may determine decisions on motions to sever and to transfer. *Chance v E. I. Du Pont De Nemours & Co.*, 57 F.R.D. 165, 1972 U.S. Dist. LEXIS 11569 (E.D.N.Y. 1972).

## **2. Question of law**

All nonforum law in this state and in most states is treated as if it were a question of law in the court of first instances and on appellate review. *Gevinson v Kirkeby-Natus Corp.*, 26 A.D.2d 71, 270 N.Y.S.2d 989, 1966 N.Y. App. Div. LEXIS 3997 (N.Y. App. Div. 1st Dep't 1966).

Court erred in dismissing breach of contract action as time-barred by 4-year statute of limitations under CLS UCC § 2-725 where defendant neither pleaded affirmative defense of statute of limitations in its answer nor moved to dismiss on ground of statute of limitations, and court took “judicial notice” of statute of limitations; although court without request may take judicial notice of common law, constitutions, and statutes of United States and of every state, it may not take judicial notice sua sponte that action is barred by statute of limitations. *Mendez v Steen Trucking, Inc.*, 254 A.D.2d 715, 680 N.Y.S.2d 134, 1998 N.Y. App. Div. LEXIS 10389 (N.Y. App. Div. 4th Dep't 1998).

In a preliminary hearing pursuant to CPLR § 4511 to examine the phrase “lesion corporelle” contained in the Warsaw Convention for purposes of determining a carrier’s liability for damages to a passenger, the phrase was determined to include the concept of mental injury as a recoverable damage, even in the absence of a concomitant physical manifestation. *Palagonia v Trans World Airlines*, 110 Misc. 2d 478, 442 N.Y.S.2d 670, 1978 N.Y. Misc. LEXIS 2929 (N.Y.

Sup. Ct. 1978), disapproved, *Eastern Airlines v Floyd*, 499 U.S. 530, 111 S. Ct. 1489, 113 L. Ed. 2d 569, 1991 U.S. LEXIS 2222 (U.S. 1991).

### **3. Federal law**

Treaty was supreme law of land of which New York courts were required to take judicial notice. Where there was absolutely no dispute over proper translation of relevant provisions of treaty, there was no necessity for hearing and expert testimony as to French legal meaning of terms of treaty, which was drawn up only in the French language. *Rosman v Trans World Airlines, Inc.*, 34 N.Y.2d 385, 358 N.Y.S.2d 97, 314 N.E.2d 848, 1974 N.Y. LEXIS 1497 (N.Y. 1974).

A New York court may take judicial notice of a federal statute. *People v Dworkin*, 36 A.D.2d 430, 321 N.Y.S.2d 263, 1971 N.Y. App. Div. LEXIS 3980 (N.Y. App. Div. 4th Dep't 1971), *aff'd*, 30 N.Y.2d 706, 332 N.Y.S.2d 645, 283 N.E.2d 620, 1972 N.Y. LEXIS 1370 (N.Y. 1972).

In Article 78 proceeding by inmate who alleged that his transfer to another correctional facility burdened his right to facilitate Islamic Therapeutic Program, which he had co-founded to provide rehabilitative counseling to other prisoners, court was not obligated by CLS CPLR § 4511 to take judicial notice of inmate's unpleaded reliance on Religious Freedom Restoration Act in support of his claim. *Salahuddin v Coughlin*, 222 A.D.2d 950, 636 N.Y.S.2d 145, 1995 N.Y. App. Div. LEXIS 13769 (N.Y. App. Div. 3d Dep't 1995), *app. denied*, 88 N.Y.2d 806, 646 N.Y.S.2d 985, 670 N.E.2d 226, 1996 N.Y. LEXIS 1716 (N.Y. 1996), *cert. denied*, 519 U.S. 937, 117 S. Ct. 317, 136 L. Ed. 2d 232, 1996 U.S. LEXIS 6287 (U.S. 1996).

State judges are charged with judicial notice of federal laws and regulations. *People v Vitale*, 80 Misc. 2d 36, 360 N.Y.S.2d 375, 1974 N.Y. Misc. LEXIS 1836 (N.Y. County Ct.), *rev'd*, *Vitale v Wilkes*, 49 A.D.2d 702, 1974 N.Y. App. Div. LEXIS 6050 (N.Y. App. Div. 2d Dep't 1974).

Warsaw Convention is supreme law of land of which New York courts must take judicial notice. *Kalish v Trans World Airlines*, 89 Misc. 2d 153, 390 N.Y.S.2d 1007, 1977 N.Y. Misc. LEXIS 1853 (N.Y. Civ. Ct. 1977).

In a hearing on attorney's fees arising from defendant's improper third party action against plaintiff's counsel in a defamation suit, the court was allowed to consider the decision of a federal court judge which awarded plaintiff's counsel \$400 per hour in an unrelated case because judicial notice could have been taken of the decision in any event. *Galasso Langione & Botter, LLP v Liotti*, 867 N.Y.S.2d 666, 22 Misc. 3d 450, 2008 N.Y. Misc. LEXIS 6675 (N.Y. App. Term 2008), *aff'd*, 81 A.D.3d 880, 917 N.Y.S.2d 664, 2011 N.Y. App. Div. LEXIS 1474 (N.Y. App. Div. 2d Dep't 2011).

#### **4. —Court Decision**

In a hearing on attorney's fees arising from defendant's improper third party action against plaintiff's counsel in a defamation suit, the court was allowed to consider the decision of a federal court judge which awarded plaintiff's counsel \$400 per hour in an unrelated case because judicial notice could have been taken of the decision in any event. *Galasso Langione & Botter, LLP v Liotti*, 867 N.Y.S.2d 666, 22 Misc. 3d 450, 2008 N.Y. Misc. LEXIS 6675 (N.Y. App. Term 2008), *aff'd*, 81 A.D.3d 880, 917 N.Y.S.2d 664, 2011 N.Y. App. Div. LEXIS 1474 (N.Y. App. Div. 2d Dep't 2011).

#### **5. Sister state law**

To require more than citations to statutes and decisional law of sister states would be a patent and futile harassment. *Gevinson v Kirkeby-Natus Corp.*, 26 A.D.2d 71, 270 N.Y.S.2d 989, 1966 N.Y. App. Div. LEXIS 3997 (N.Y. App. Div. 1st Dep't 1966).

Even though not requested or advised, the Civil Court of the City of New York is required to take judicial notice of the laws of other states. *Smith v Smith*, 48 Misc. 2d 895, 266 N.Y.S.2d 302, 1965 N.Y. Misc. LEXIS 1326 (N.Y. Civ. Ct. 1965).

Court has power to take judicial notice of any statute or law of a sister state and pass upon its validity and effect. *Ehrenzweig v Ehrenzweig*, 86 Misc. 2d 656, 383 N.Y.S.2d 487, 1976 N.Y.



Misc. LEXIS 2501 (N.Y. Sup. Ct. 1976), *aff'd*, 61 A.D.2d 1003, 402 N.Y.S.2d 638, 1978 N.Y. App. Div. LEXIS 10629 (N.Y. App. Div. 2d Dep't 1978).

## **6. —Pleading**

CPLR 4511(a) requires the court to take judicial notice of sister-state statutes whether or not they are pleaded. *Long v Pan American World Airways, Inc.*, 16 N.Y.2d 337, 266 N.Y.S.2d 513, 213 N.E.2d 796, 1965 N.Y. LEXIS 917 (N.Y. 1965).

The court is obliged to accord notice to sister state law whether pleaded or not, and whether advance notice is given or not. *Gevinson v Kirkeby-Natus Corp.*, 26 A.D.2d 71, 270 N.Y.S.2d 989, 1966 N.Y. App. Div. LEXIS 3997 (N.Y. App. Div. 1st Dep't 1966).

In action to recover accumulated arrears for the support of children under an Illinois decree of divorce, it is unnecessary to plead the law of Illinois. *Hatoff v Hatoff*, 41 Misc. 2d 1007, 246 N.Y.S.2d 711, 1964 N.Y. Misc. LEXIS 2143 (N.Y. Civ. Ct. 1964).

The discretion of the court regarding the taking of judicial notice of applicable foreign law has been eliminated by this section, making judicial notice of the relevant common and statutory law of a sister state mandatory upon the courts, though neither pleaded nor proved. *Martens v Bethel*, 51 Misc. 2d 202, 273 N.Y.S.2d 137, 1966 N.Y. Misc. LEXIS 1582 (N.Y. Sup. Ct. 1966).

## **7. —Advance notice**

The court is obliged to accord notice to sister state law whether pleaded or not, and whether advance notice is given or not. So long as the court is bound to notice sister state law the failure to give prior notice to reliance on such law, to particularize it, or to brief it, has no preclusive or limiting effect. *Gevinson v Kirkeby-Natus Corp.*, 26 A.D.2d 71, 270 N.Y.S.2d 989, 1966 N.Y. App. Div. LEXIS 3997 (N.Y. App. Div. 1st Dep't 1966).

## **8. —Particular cases**

Although compelled by CPLR 4511, subd b to take notice of Pennsylvania law in dispute arising out of contract which expressly provided that such law governed, court assumed that Pennsylvania law was identical to New York law on issue of entitlement to unpaid interest upon acceleration of note, where neither party asserted any Pennsylvania law. *Atlas Financial Corp. v Ezrine*, 42 A.D.2d 256, 345 N.Y.S.2d 36, 1973 N.Y. App. Div. LEXIS 4116 (N.Y. App. Div. 1st Dep't 1973).

Even though Pennsylvania statutes were not specifically entered in the New York record, the New York courts were required to take judicial notice of them. *People ex rel. Grillo v Holtzman*, 91 A.D.2d 983, 457 N.Y.S.2d 575, 1983 N.Y. App. Div. LEXIS 16283 (N.Y. App. Div. 2d Dep't), *aff'd*, 58 N.Y.2d 934, 460 N.Y.S.2d 533, 447 N.E.2d 81, 1983 N.Y. LEXIS 2894 (N.Y. 1983).

In conversion action against interstate carrier based on conduct of Utah storage company, local common law as to apparent authority of agent would apply, and since parties failed to make showing as to law of Utah, court would presume it was same as New York common law. *Edwards v North American Van Lines*, 129 A.D.2d 869, 513 N.Y.S.2d 895, 1987 N.Y. App. Div. LEXIS 45557 (N.Y. App. Div. 3d Dep't 1987).

Common law of Connecticut judicially noticed under CPLR. *Emonz v New York, N. H. & H. R. Co.*, 42 Misc. 2d 957, 249 N.Y.S.2d 506, 1964 N.Y. Misc. LEXIS 1876 (N.Y. Sup. Ct. 1964), *aff'd*, 24 A.D.2d 555, 260 N.Y.S.2d 611, 1965 N.Y. App. Div. LEXIS 6130 (N.Y. App. Div. 2d Dep't 1965).

Court was commanded by this rule to take judicial notice of Connecticut statute creating presumption that operator of vehicle with owner's consent was agent of owner, and Connecticut law need neither be pleaded nor proved. *Monko v Cicoria*, 46 Misc. 2d 565, 260 N.Y.S.2d 70, 1965 N.Y. Misc. LEXIS 1950 (N.Y. Sup. Ct. 1965).

Law of domicile governs age of majority, and Surrogate's Court would take judicial notice of Massachusetts statute reducing age of majority from 21 to 18. *In re Will of Sikes*, 77 Misc. 2d 63, 352 N.Y.S.2d 391, 1974 N.Y. Misc. LEXIS 1083 (N.Y. Sur. Ct. 1974).

Where defendant cross-moved to vacate a New Jersey judgment for support arrears filed in New York on the ground that the judgment was nonfinal pursuant to New Jersey law and thus not entitled to full faith and credit in New York, further hearings to determine the issue would be required since, although the court could take judicial notice of the laws of New Jersey, defendant failed to present an applicable New Jersey common or statutory law pertaining to the finality of judgments. *Wagner v Wagner*, 115 Misc. 2d 764, 454 N.Y.S.2d 661, 1982 N.Y. Misc. LEXIS 3768 (N.Y. Sup. Ct. 1982).

Title to and rights in a bank deposit standing in the name of the depositor and another normally were governed by the law of the place where the deposit was made and the account was kept and the surrogate court saw no reason to deviate from that rule and found South Carolina's S.C. Code Ann. § 62-6-104 governed and not N.Y. Banking Act § 675, and so the court took note of S.C. Code Ann. § 62-6-104 under N.Y. C.P.L.R. § 4511. *Matter of Goodman*, 781 N.Y.S.2d 624, 1 Misc. 3d 909(A), 2004 N.Y. Misc. LEXIS 23 (N.Y. Sur. Ct. 2004).

## **9. Law of foreign countries**

The draftsmen of the CPLR were definite in the separation of the problems presented by the foreign law and sister state law and the statute enacted leaves no room for failing to distinguish between the two. *Gevinson v Kirkeby-Natus Corp.*, 26 A.D.2d 71, 270 N.Y.S.2d 989, 1966 N.Y. App. Div. LEXIS 3997 (N.Y. App. Div. 1st Dep't 1966).

Court had discretion to take judicial notice of law of Mexico, which is based on code system, not common law, and court's construction thereof was legal matter appropriate for resolution on summary judgment motion. *Harris S.A. De C.V. v Grupo Sistemas Integrales De Telecomunicacion S.A. De C.V.*, 279 A.D.2d 263, 719 N.Y.S.2d 25, 2001 N.Y. App. Div. LEXIS 39 (N.Y. App. Div. 1st Dep't), app. denied, 96 N.Y.2d 709, 725 N.Y.S.2d 639, 749 N.E.2d 208, 2001 N.Y. LEXIS 707 (N.Y. 2001).

Although there is no disagreement as to the applicable foreign law, its tenor is nevertheless a matter for the determination of the court under the provisions of subd c of this rule. *State Street*

Properties, Inc. v Mizrahi, 44 Misc. 2d 964, 254 N.Y.S.2d 776, 1964 N.Y. Misc. LEXIS 1285 (N.Y. App. Term 1964).

Discretion is vested in the Surrogate's Court to take judicial notice of law of foreign countries in probate matters. Estate of Hahnel, 88 Misc. 2d 524, 389 N.Y.S.2d 970, 1976 N.Y. Misc. LEXIS 2698 (N.Y. Sur. Ct. 1976), aff'd, 58 A.D.2d 531, 395 N.Y.S.2d 395, 1977 N.Y. App. Div. LEXIS 12500 (N.Y. App. Div. 1st Dep't 1977).

In determining legality of contract to circumvent official exchange rate of Nigeria, defendant's noncompliance with CLS CPLR § 3016(e) could be remedied by trial court's taking judicial notice of foreign law without being requested to do so (CLS CPLR § 4511(b)), and without presentation of expert testimony. Ekwunife v Erike, 171 Misc. 2d 554, 658 N.Y.S.2d 166, 1997 N.Y. Misc. LEXIS 183 (N.Y. App. Term 1997).

*Unpublished decision:* Fact issues precluded summary judgment in managing company's breach of contract and tortious interference claims because, inter alia, photocopies of decisions rendered by an Italian court were not dispositive, as they were not in a form that entitled them to recognition as foreign country money judgments under New York law; nor did the court's power to judicially notice Italian law under N.Y. C.P.L.R. 4511 resolve the factual dispute. Major S.R.L. v Dahlquist, 225 N.Y.L.J. 5, 2001 N.Y. Misc. LEXIS 1358 (N.Y. Civ. Ct. Jan. 8, 2001).

Trial court granted a wife's motion to dismiss ancillary claims of child custody and support in a divorce action without prejudice because the court was not supplied with an interpreter to determine whether or not an Italian separation proceeding had fully adjudicated the matters or not; without such information, the court was unable to reach a decision as to whether or not the Italian decision had preclusive effect in the United States, despite the fact that the foreign judgment was registered under N.Y. Dom. Rel. Law § 77-d. Polgar v Focacci, 771 N.Y.S.2d 814, 2 Misc. 3d 836, 2003 N.Y. Misc. LEXIS 1670 (N.Y. Sup. Ct. 2003).

## **10. —Pleading**

The law of foreign countries should be stated in substance in the pleading which relies upon it. *Gevinson v Kirkeby-Natus Corp.*, 26 A.D.2d 71, 270 N.Y.S.2d 989, 1966 N.Y. App. Div. LEXIS 3997 (N.Y. App. Div. 1st Dep't 1966).

Although it is not necessary to plead foreign law and the court, under CPLR 4511(a) will take judicial notice of the public statutes of a foreign jurisdiction, traffic rules, regulations, and ordinances allegedly violated are matters subject to a bill of particulars in tort actions, and while the substance need not be set forth, the identity of the rules, regulations, etc., involved should be indicated as an aid to the court and the litigant to avoid mistake as well as determine the applicability thereof. *Vagelos v Robinson*, 37 A.D.2d 544, 322 N.Y.S.2d 384, 1971 N.Y. App. Div. LEXIS 3790 (N.Y. App. Div. 1st Dep't 1971).

Trial court did not abuse its discretion by taking judicial notice of Ontario law regarding noneconomic damages despite the failure of defendants to raise the applicability of the law as an affirmative defense and to provide the substance of the law in their pleadings in accordance with N.Y. C.P.L.R. 3016(e); because N.Y. C.P.L.R. 4511(b) permits a court to take judicial notice of the laws of foreign countries that are presented prior to the presentation of any evidence at the trial, the court was not barred from doing so based on a party's failure to comply with the requirement in N.Y. C.P.L.R. 3016(e) that the substance of such laws shall be set forth in the pleading. *Butler v Stagecoach Group, PLC*, 72 A.D.3d 1581, 900 N.Y.S.2d 541, 2010 N.Y. App. Div. LEXIS 3584 (N.Y. App. Div. 4th Dep't 2010), *aff'd in part, modified*, 17 N.Y.3d 306, 929 N.Y.S.2d 41, 952 N.E.2d 1033, 2011 N.Y. LEXIS 1803 (N.Y. 2011).

Although CLS CPLR § 4511(b) permits court to take judicial notice of law of foreign country if notice is given in pleadings or prior to presentation of evidence at trial, pleading must be sufficient to provide adversarial party with opportunity to prepare necessary response, especially considering requirement of CLS CPLR § 3016(e) that in pleading where cause of action or defense is based on law of foreign country, substance of foreign law relied upon shall be stated. *Elghanayan v Elghanayan*, 148 Misc. 2d 552, 560 N.Y.S.2d 955, 1990 N.Y. Misc. LEXIS 500 (N.Y. Sup. Ct. 1990).

## **11. —Advance notice**

Court retains discretion to apply law of foreign countries notwithstanding the absence of advance notice or request to do so. In the event that suitable notice is given of reliance on the law of foreign countries the court “shall” take judicial notice, but the notice of reliance may be in the pleading, or prior to the presentation of evidence, or as the court may otherwise permit. *Gevinson v Kirkeby-Natus Corp.*, 26 A.D.2d 71, 270 N.Y.S.2d 989, 1966 N.Y. App. Div. LEXIS 3997 (N.Y. App. Div. 1st Dep't 1966).

Court properly determined that CLS CPLR §§ 4511(b) and 3016(e) should be read together obviating need to plead reliance on foreign law, so that plaintiff was not prejudiced by lateness of defendant's motion, made under CLS CPLR § 3016 requesting that Ontario law be applied to her claim after time to vacate note of issue filed in case had expired; court has discretion to apply law of foreign country notwithstanding absence of advance notice or request to do so. *Burns v Young*, 239 A.D.2d 727, 657 N.Y.S.2d 502, 1997 N.Y. App. Div. LEXIS 5261 (N.Y. App. Div. 3d Dep't 1997).

## **12. —Particular cases**

Absent proof as to whether divorce decree obtained in Dominican Republic and separation agreement incorporated therein were subject to collateral attack in the courts of rendition on ground of fraud it was error for trial court, in motion for summary judgment in wife's action to set aside the decree and separation agreement, to have adjudged that such decree and agreement were insulated from collateral attack in New York courts; since there has been no request on appeal that judicial notice be taken of the laws of Dominican Republic case was to be remitted to resolution of the foreign law issue. *Feinberg v Feinberg*, 40 N.Y.2d 124, 386 N.Y.S.2d 77, 351 N.E.2d 725, 1976 N.Y. LEXIS 2788 (N.Y. 1976).

Defendants' failure to raise Ontario law in their answers as required by N.Y. C.P.L.R. 3016(e) did not preclude the lower courts from judicially noticing Ontario law under N.Y. C.P.L.R. 4511(b) and in engaging in a choice-of-law analysis, as defendants raised the issue in their pretrial motions, and plaintiffs were not prejudiced because the split-domicile lawsuit presented an obvious choice-of-law dilemma. *Edwards v Erie Coach Lines Co.*, 17 N.Y.3d 306, 929 N.Y.S.2d 41, 952 N.E.2d 1033, 2011 N.Y. LEXIS 1803 (N.Y. 2011).

The court will take judicial notice of the law as it existed in a Mexican state at the time of a divorce which was being attacked for alleged failure to comply with the residence requirements in effect at the time of the purported divorce. *Gorie v Gorie*, 26 A.D.2d 368, 274 N.Y.S.2d 985, 1966 N.Y. App. Div. LEXIS 3078 (N.Y. App. Div. 1st Dep't 1966).

Judicial notice of laws of Guadeloupe could be taken in accord with CLS CPLR § 4511 in personal injury action arising from automobile accident on that island, to extent that such laws were relevant regarding standards of conduct and rules of road. *Corines v Dobson*, 135 A.D.2d 390, 521 N.Y.S.2d 686, 1987 N.Y. App. Div. LEXIS 52359 (N.Y. App. Div. 1st Dep't 1987).

In negligence action by bus passenger who was injured in traffic accident in province of Quebec, Canada, defendant bus company was not entitled to summary judgment of basis of its requested application of Quebec law where company did not furnish court with sufficient information to enable it to comply with request, and facts of case did not warrant exercise of court's discretionary power to take judicial notice of foreign law. *Lowy v Heimann's Bus Tours*, 240 A.D.2d 548, 658 N.Y.S.2d 452, 1997 N.Y. App. Div. LEXIS 6605 (N.Y. App. Div. 2d Dep't 1997), app. dismissed, 91 N.Y.2d 956, 671 N.Y.S.2d 716, 694 N.E.2d 885, 1998 N.Y. LEXIS 894 (N.Y. 1998).

In a replevin action, the trial court properly declined, under N.Y. C.P.L.R. 4511(b), to take judicial notice of the ordinances of a foreign country, in considering an argument that the action was barred by the limitations periods in those ordinances, because the interplay between the time limits in those ordinances and those in the country's generally applicable civil code was not

explained. *Warin v Wildenstein & Co.*, 297 A.D.2d 214, 746 N.Y.S.2d 282, 2002 N.Y. App. Div. LEXIS 7860 (N.Y. App. Div. 1st Dep't 2002).

Lower court did not improvidently exercise its discretion in not holding a hearing on defendants' motion to dismiss under N.Y. C.P.L.R. 4511(d) because (1) the covenants requiring the borrower's consent to any assignment of the loan agreement and selecting the law of England as governing were incorporated by reference into the note at issue; (2) under the English substantive law, defendant debtor hotel was entitled to set aside the assignment of the note because nonparty respondent neither sought nor obtained the consent of the receiver of the hotel defendants' New York assets; (3) the loan agreement set forth the loan terms, which were incorporated into the note, and was a commercial contract, and thus, policies against alienation of an estate in land were not implicated and the general rule governed; and (4) the parties made substantial submissions interpreting a foreign law. *HSBC Guyerzeller Bank AG v Chascona N.V.*, 42 A.D.3d 381, 841 N.Y.S.2d 11, 2007 N.Y. App. Div. LEXIS 8801 (N.Y. App. Div. 1st Dep't 2007).

Owner's N.Y. C.P.L.R. 3213 motion to enforce a Spanish court's damages award against an arrestor who improperly commenced a proceeding to arrest the owner's ship in Spain was improperly granted since the motion court was not provided adequate information to determine that the document was a final judgment under Spanish law for purposes of this section and ripe for enforcement in New York where the experts' opinions differed as to Spanish law, and translated copies of the sections of Spain's Civil Proceedings Act cited by both experts were not provided. *Sea Trade Mar. Corp. v Coutsoyontis*, 111 A.D.3d 483, 978 N.Y.S.2d 115, 2013 N.Y. App. Div. LEXIS 7512 (N.Y. App. Div. 1st Dep't 2013).

Trial court's error in reading or paraphrasing approximately eight sentences from an order of the Supreme Court of the Republic of the Philippines in a proceeding commenced by the Republic against a former First Lady was not harmless with respect to defendant's conspiracy conviction because only one sentence purported to state the law of the Philippines and the remaining portions of the opinion read to the jury consisted of fact findings, and were not proper subjects of



judicial notice. *People v Bautista*, 132 A.D.3d 523, 18 N.Y.S.3d 47, 2015 N.Y. App. Div. LEXIS 7640 (N.Y. App. Div. 1st Dep't 2015).

Court would take judicial notice that official rate of exchange of Czechoslovak crown was an artificial rate, and that this rate, and the rate at which United States dollars may be exchanged through the medium of the Tuzex program, both reflect a substantial overvaluation of the crown, as related to the dollar; and that the rate at which Czechoslovak currency was procurable here was far more favorable than the rate offered through the Tuzex program, and reflected a substantial overvaluation of the Czechoslovak crown. *In re Shefsick's Estate*, 50 Misc. 2d 293, 270 N.Y.S.2d 34, 1966 N.Y. Misc. LEXIS 1847 (N.Y. Sur. Ct. 1966).

The courts of New York will take judicial notice of the law of Czechoslovakia which is the place of decedent's domicil with reference to distribution of a legatee's share of the residue of deceased's personal estate. *In re Matous' Estate*, 53 Misc. 2d 255, 278 N.Y.S.2d 70, 1967 N.Y. Misc. LEXIS 1692 (N.Y. Sur. Ct. 1967).

Court would take judicial notice of Israeli law where existence and accuracy of relevant foreign statutes was uncontested, and court could determine without trial that laws of Israel do not confer state of common law marriage upon man and woman cohabiting in common household. *In re Estate of Jenkins*, 133 Misc. 2d 420, 506 N.Y.S.2d 1009, 1986 N.Y. Misc. LEXIS 2874 (N.Y. Sur. Ct. 1986).

As a wife and plaintiff neither invoked Polish law nor supplied applicable citations to it, they were presumed to agree that the law of New York controlled the interpretation of an agreement between the wife and a decedent purportedly waiving the wife's interests in an individual retirement account and life insurance proceeds. *Storozynski v Storozynski*, 10 A.D.3d 419, 781 N.Y.S.2d 141, 2004 N.Y. App. Div. LEXIS 10315 (N.Y. App. Div. 2d Dep't 2004).

Creditor's affirmative defense, which alleged that outstanding issues with regard to the applicability of Soviet law, precluded a grant of summary judgment on a Russian licensee's claim for wrongful attachment, failed because the creditor never gave the requisite notice or

established the substance of Soviet law. *Bank of N.Y. v Nickel*, 14 A.D.3d 140, 789 N.Y.S.2d 95, 2004 N.Y. App. Div. LEXIS 15495 (N.Y. App. Div. 1st Dep't 2004), app. dismissed, 4 N.Y.3d 846, 797 N.Y.S.2d 423, 830 N.E.2d 322, 2005 N.Y. LEXIS 777 (N.Y. 2005), app. dismissed, 4 N.Y.3d 843, 797 N.Y.S.2d 414, 830 N.E.2d 312, 2005 N.Y. LEXIS 791 (N.Y. 2005).

In an action to regain a painting that was allegedly taken by the Nazis and now located in Switzerland, while this statute required the court to take judicial notice of the laws of a foreign jurisdiction upon the request of the party, the court would not give further consideration or application to those laws. The court held that it would apply the laws of the state of New York during the remainder of the litigation. *Gowen v Helly Nahmad Gallery, Inc.*, 60 Misc. 3d 963, 77 N.Y.S.3d 605, 2018 N.Y. Misc. LEXIS 1625 (N.Y. Sup. Ct. 2018), aff'd in part, 169 A.D.3d 580, 95 N.Y.S.3d 62, 2019 N.Y. App. Div. LEXIS 1363 (N.Y. App. Div. 1st Dep't 2019).

Although the parties obtained a Quaker marriage license, were issued a Pennsylvania marriage certificate, had a marriage ceremony in France, and lived in New York, the trial court did not apply French law to determine the validity of the marriage because the husband did not offer, inter alia, either substantive French law, analysis of why French choice of law would apply, or other sufficient information to demonstrate whether the marriage would be valid under French law. *N.B. v F.W.*, 62 Misc. 3d 1012, 91 N.Y.S.3d 660, 2019 N.Y. Misc. LEXIS 14 (N.Y. Sup. Ct. 2019).

Judicial notice, upon request of Greek law was denied where the Greek law relied upon was only set out in a memorandum prepared by counsel who was presumably not an expert in Greek law. Because of the difficulties of language, the insubstantial assistance provided by respondent's counsel, and the court's unfamiliarity with the Greek legal system, the court would not exercise its discretion in order to take judicial notice. *Petition of Petrol Shipping Corp.*, 37 F.R.D. 437, 1965 U.S. Dist. LEXIS 9951 (D.N.Y. 1965), aff'd, 360 F.2d 103, 1966 U.S. App. LEXIS 6406 (2d Cir. N.Y. 1966).

### **13. Ordinances**

The court could take judicial notice of an ordinance requiring the licensing of drive-in theaters. *Tonawanda v Tonawanda Theater Corp.*, 29 A.D.2d 217, 287 N.Y.S.2d 273, 1968 N.Y. App. Div. LEXIS 4656 (N.Y. App. Div. 4th Dep't 1968).

Court may properly take judicial notice of zoning ordinance but errs in taking additional testimony on whether city would have granted special permit. *Harwood v State*, 112 A.D.2d 741, 492 N.Y.S.2d 236, 1985 N.Y. App. Div. LEXIS 56103 (N.Y. App. Div. 4th Dep't 1985).

In action against city for personal injuries sustained by plaintiff when he fell down steps in theater at city college while attending performance there, court did not significantly prejudice city when it took judicial notice, without notice and after completion of trial, of city building code provision that required that each step in aisle be marked with contrasting color stripe and be provided with step light; applying code provision merely created new theory of liability and did not require new facts. *Rothstein v City Univ. of New York*, 194 A.D.2d 533, 599 N.Y.S.2d 39, 1993 N.Y. App. Div. LEXIS 5450 (N.Y. App. Div. 2d Dep't 1993).

In personal injury action, court did not err by refusing to take judicial notice of town ordinance, where plaintiffs failed to cite ordinance in any pleading and waited until both sides had rested to request that trial court take judicial notice of it. *Kolkmeyer v Westhampton Taxi & Limo Serv.*, 261 A.D.2d 587, 690 N.Y.S.2d 675, 1999 N.Y. App. Div. LEXIS 5718 (N.Y. App. Div. 2d Dep't 1999).

A court may take judicial notice of the filing of a village ordinance under subdivision (a) of this section; however, a court cannot take judicial notice of compliance with an ordinance establishing speed limits for vehicles traveling within the village. *People v Salzburg*, 47 Misc. 2d 866, 263 N.Y.S.2d 415, 1965 N.Y. Misc. LEXIS 1618 (N.Y. County Ct. 1965).

A trial court may take judicial notice of ordinances, but may not take judicial notice of compliance with an ordinance. *People v Bradfute*, 48 Misc. 2d 583, 265 N.Y.S.2d 403, 1965 N.Y. Misc. LEXIS 1337 (N.Y. County Ct. 1965), different results reached on reh'g, 49 Misc. 2d 1092, 269 N.Y.S.2d 192, 1966 N.Y. Misc. LEXIS 1944 (N.Y. County Ct. 1966).

A court is permitted to take judicial notice of village ordinances. *People v Goldsmith*, 110 Misc.2d 528, 442 N.Y.S.2d 760, 1981 N.Y. Misc. LEXIS 3118 (N.Y. Village Ct. 1981).

Court had authority to take judicial notice of subsequent amendments to the town ordinance at issue and to determine through the amendments that the ordinance was applicable to the church owner's building and gave the town authority to order demolition of the building. *St. David's Anglican Catholic Church, Inc. v Town of Halfmoon*, 11 A.D.3d 874, 783 N.Y.S.2d 695, 2004 N.Y. App. Div. LEXIS 12629 (N.Y. App. Div. 3d Dep't 2004).

No further discovery was necessary to determine whether defendant city's use of public health related ordinances as a source of authority to enforce city wide smoking bans complied with the Fourth Amendment, because to the extent that the city relied on the public health-related ordinances, these laws and regulations were readily accessible to the plaintiffs without further discovery, and could be considered by the court upon judicial notice under N.Y. Civil Practice Law and Rules § 4511(b). *Players, Inc. v City of New York*, 371 F. Supp. 2d 522, 2005 U.S. Dist. LEXIS 13780 (S.D.N.Y. 2005).

#### **14. Official rules and regulations**

Proof of extrinsic regulations and rules of New York State police is unnecessary in cases in which there is presented no substantial question with respect to the validity of the consent or propriety of the particular form of test selected to be given; the provisions of the rules does not bear on the substantive results of the test, for their reliability is determinable in accordance with medical and scientific standards generally and not according to regulations promulgated by one "police force" or another. *People v Monahan*, 25 N.Y.2d 378, 306 N.Y.S.2d 453, 254 N.E.2d 758, 1969 N.Y. LEXIS 961 (N.Y. 1969).

Although city discovered subsequent to verdict for pedestrian injured in fall on defective sidewalk that amended ordinance required written notice of defect, only actual notice was applicable to case which had been tried on the latter theory from the beginning. *Martin v*

Cohoes, 37 N.Y.2d 162, 371 N.Y.S.2d 687, 332 N.E.2d 867, 1975 N.Y. LEXIS 1941 (N.Y.), reh'g denied, 37 N.Y.2d 817, 375 N.Y.S.2d 1029, 1975 N.Y. LEXIS 3045 (N.Y. 1975).

Court of Appeals could take judicial notice of regulatory impact statement which Superintendent of Insurance filed in connection with regulations establishing primary and excess medical malpractice premium rates while Article 78 proceeding challenging rates was pending before Supreme Court. *Med. Malpractice Ins. Ass'n v Superintendent of Ins.*, 72 N.Y.2d 753, 537 N.Y.S.2d 1, 533 N.E.2d 1030, 1988 N.Y. LEXIS 3467 (N.Y. 1988), cert. denied, 490 U.S. 1080, 109 S. Ct. 2100, 104 L. Ed. 2d 661, 1989 U.S. LEXIS 2552 (U.S. 1989).

A hearing officer may take official notice of the regulations of agencies of the state which appear in the Official Compilation of Codes, Rules and Regulations. *Gae Farms, Inc. v Diamond*, 40 A.D.2d 909, 337 N.Y.S.2d 865, 1972 N.Y. App. Div. LEXIS 3346 (N.Y. App. Div. 3d Dep't 1972).

Appellate Division would take judicial notice of Governor's letter and of regulations promulgated and filed at his direction under CLS Trans § 428, empowering and directing Department of Transportation (DOT) to implement disadvantaged business enterprises (DBE) program for all transportation infrastructure renewal projects, where those regulations and letter were not before Supreme Court and were de hors record on appeal of judgment, which invalidated DOT's DBE program for exclusively state-funded contracts because governor had not acted under authority granted by § 428; inasmuch as appellate court is required to apply law as it exists at time of appeal, it was appropriate to take judicial notice of Governor's letter and filed regulations, particularly since latter were remedial and prospective in nature. *Rex Paving Corp. v White*, 139 A.D.2d 176, 531 N.Y.S.2d 831, 1988 N.Y. App. Div. LEXIS 14868 (N.Y. App. Div. 3d Dep't 1988).

It was reversible error for court to refuse to take "judicial cognizance" of NYC Admin Code §§ 19-105, 19-106, and 19-107 and to instruct jury on their meaning and application. *Stokes v Vales Constr. Corp.*, 269 A.D.2d 274, 704 N.Y.S.2d 455, 2000 N.Y. App. Div. LEXIS 2036 (N.Y. App. Div. 1st Dep't 2000).

In dental malpractice action, court properly refused to take judicial notice of, or charge jury as to, certain regulations of Commissioner of Education regarding taking of dental impressions where plaintiff did not prove relevance or applicability of those regulations. *McCluskey v Shapiro*, 273 A.D.2d 284, 709 N.Y.S.2d 854, 2000 N.Y. App. Div. LEXIS 6487 (N.Y. App. Div. 2d Dep't 2000).

The courts must take judicial notice of the "Official Compilation of Codes, Rules and Regulations of New York State Offices & Agencies". *People v Wiley*, 59 Misc. 2d 519, 299 N.Y.S.2d 704, 1969 N.Y. Misc. LEXIS 1572 (N.Y. Dist. Ct. 1969).

Judicial notice could be taken of the rules and regulations of the New York State Commission of Correction. *Cooper v Morin*, 91 Misc. 2d 302, 398 N.Y.S.2d 36, 1977 N.Y. Misc. LEXIS 2305 (N.Y. Sup. Ct. 1977), modified in part, aff'd, 64 A.D.2d 130, 409 N.Y.S.2d 30, 1978 N.Y. App. Div. LEXIS 11847 (N.Y. App. Div. 4th Dep't 1978).

In action against City University of New York for injuries sustained in fall while descending stairs in darkened auditorium, judicial notice would be taken of Building Code provision requiring each aisle step in place of assembly to have step light (NYC Admin Code § 27-532(a)(7)(g)), even though Building Code was neither pleaded nor included in bill of particulars, since claimant had been allowed to amend pleadings under CLS CPLR § 3025 to include Building Code provision in absence of prejudice to defendant. *Rothstein v City Univ. of N.Y.*, 148 Misc. 2d 911, 562 N.Y.S.2d 340, 1990 N.Y. Misc. LEXIS 560 (N.Y. Ct. Cl. 1990), aff'd, 194 A.D.2d 533, 599 N.Y.S.2d 39, 1993 N.Y. App. Div. LEXIS 5450 (N.Y. App. Div. 2d Dep't 1993).

In trial for first degree promoting prison contraband, court denied People's request to take judicial notice of relevant NYCRR regulation establishing that razor blade could be contraband, where request was not made until after People rested their case and defendant moved for trial order of dismissal based on deficiencies in People's case; granting request to take judicial notice would be tantamount to allowing People to reopen their case. *People v Canty*, 187 Misc. 2d 474, 722 N.Y.S.2d 352, 2001 N.Y. Misc. LEXIS 42 (N.Y. County Ct. 2001).

## **15. —Motor vehicle regulations: generally**

Trial court was required to take judicial notice of regulations of the New York State Thruway Authority, which clearly established that a driver was not voluntarily entitled to enter the mall area. *Cruise v New York State Thruway Authority*, 28 A.D.2d 1029, 283 N.Y.S.2d 779, 1967 N.Y. App. Div. LEXIS 3277 (N.Y. App. Div. 3d Dep't 1967), *aff'd*, 26 N.Y.2d 1037, 311 N.Y.S.2d 924, 260 N.E.2d 553, 1970 N.Y. LEXIS 1335 (N.Y. 1970).

The dictates of CPLR § 4511(a) appear to apply to criminal as well as to civil proceedings. Therefore, the court would take judicial notice of the regulations of the State Department of Transportation with respect to the maximum speed limit established for a particular highway. *People v Kasprzyk*, 59 Misc. 2d 236, 298 N.Y.S.2d 334, 1969 N.Y. Misc. LEXIS 1788 (N.Y. J. Ct. 1969).

## **16. —Motor vehicle regulations: Vehicle and Traffic Law**

Where defendant was charged with driving in excess of 50 miles per hour in violation of Vehicle and Traffic Law § 1180, subdivision [b] which statute provided such limit except “when maximum speed limits have been establish as hereinafter authorized,” the court could take judicial notice of the Official Compilation of Codes, Rules and Regulations of the State of New York, which did not contain any change in the 50-mile-per-hour speed limit for the village in question and, thus, the people met the burden of proof placed upon them by law. *People v Foster*, 27 N.Y.2d 47, 313 N.Y.S.2d 384, 261 N.E.2d 389, 1970 N.Y. LEXIS 1156 (N.Y. 1970).

The court must take judicial notice of a regulation promulgated pursuant to Vehicle and Traffic Law § 1622(1) found in the Official Compilation of Codes, Rules and Regulations of the State of New York. *People v Stuck*, 54 Misc. 2d 811, 283 N.Y.S.2d 564, 1967 N.Y. Misc. LEXIS 1206 (N.Y. County Ct. 1967).

## **II. Under Former Civil Practice Laws**

### **A. In General**

## **17. Generally**

As to whether an act was passed by the requisite vote, the printed statute is presumptively correct and the original is conclusive. *People ex rel. Purdy v Commissioners of Highways*, 54 N.Y. 276, 54 N.Y. (N.Y.S.) 276, 1873 N.Y. LEXIS 44 (N.Y. 1873); see *People v Devlin*, 33 N.Y. 269, 33 N.Y. (N.Y.S.) 269, 1865 N.Y. LEXIS 92 (N.Y. 1865).

CPA § 344-a was intended as safety valve against miscarriage of justice, due to mistake, and not as charter to every judge to apply whatsoever law he liked and could find. *Arams v Arams*, 45 N.Y.S.2d 251, 182 Misc. 328, 1943 N.Y. Misc. LEXIS 2938 (N.Y. Sup. Ct. 1943).

## **18. Constitutionality**

Constitutionality of CPA § 344-a upheld. *Jongebloed v Erie R. Co.*, 297 N.Y. 534, 74 N.E.2d 470, 297 N.Y. (N.Y.S.) 534, 1947 N.Y. LEXIS 1026 (N.Y. 1947), reh'g denied, 297 N.Y. 603, 75 N.E.2d 273, 297 N.Y. (N.Y.S.) 603, 1947 N.Y. LEXIS 1091 (N.Y. 1947), cert. denied, 333 U.S. 855, 68 S. Ct. 733, 92 L. Ed. 1136, 1948 U.S. LEXIS 2426 (U.S. 1948).

## **19. At Special Term**

The term “trial court” in this section, includes a Special Term for Motions and such special term may take judicial notice of matters stated in the section. *Pfleuger v Pfleuger*, 304 N.Y. 148, 106 N.E.2d 495, 304 N.Y. (N.Y.S.) 148, 1952 N.Y. LEXIS 764 (N.Y. 1952).

Where construction of foreign statute is involved and judicial decisions germane to issue are presented, Special Term should exercise its discretion and take judicial notice of them. *Morton v Maryland Casualty Co.*, 1 A.D.2d 116, 148 N.Y.S.2d 524, 1955 N.Y. App. Div. LEXIS 3637 (N.Y. App. Div. 2d Dep't 1955), aff'd, 4 N.Y.2d 488, 176 N.Y.S.2d 329, 151 N.E.2d 881, 1958 N.Y. LEXIS 864 (N.Y. 1958).



Special Term of Supreme Court cannot take judicial notice of either common law or statutes of sister state. *McKinney v Schuster*, 110 N.Y.S.2d 74, 202 Misc. 450, 1952 N.Y. Misc. LEXIS 2381 (N.Y. Sup. Ct. 1952).

Busy Special Term should not be burdened with resort to research of statutes of sister states when it is readily within means of counsel to submit certified or exemplified copies thereof, and parties will be left to their proof at trial. *State of Maryland (D'Agostino) v Branch Motor Express Co.*, 127 N.Y.S.2d 920, 204 Misc. 887, 1953 N.Y. Misc. LEXIS 2610 (N.Y. Sup. Ct. 1953).

In action for conversion, where cause arose in Italy which is not common law country, it was held preferable to defer proof of foreign law to time of trial. *Sinai v Levi*, 144 N.Y.S.2d 316, 208 Misc. 650, 1955 N.Y. Misc. LEXIS 3736 (N.Y. City Ct. 1955).

Special Term has discretion to take judicial notice of foreign statute or law. *De Sairigne v Gould*, 3 Misc. 2d 452, 148 N.Y.S.2d 57, 1955 N.Y. Misc. LEXIS 2169 (N.Y. Sup. Ct. 1955), *aff'd*, 1 A.D.2d 820, 150 N.Y.S.2d 152, 1956 N.Y. App. Div. LEXIS 6227 (N.Y. App. Div. 1st Dep't 1956).

The court on motions addressed to the pleadings and for summary judgment may take judicial notice of the laws of sister states, and may interpret such laws. *Dotson v Easley*, 28 Misc. 2d 456, 209 N.Y.S.2d 1014, 1960 N.Y. Misc. LEXIS 2100 (N.Y. Sup. Ct. 1960).

Special Term of Supreme Court may in its discretion take judicial notice of ordinances. *Halpern v Dassler*, 135 N.Y.S.2d 8, 1954 N.Y. Misc. LEXIS 2859 (N.Y. Sup. Ct. 1954).

## **20. —On motion to dismiss pleading for insufficiency**

Special Term, Supreme Court, may take judicial notice of statutes of sister state to sustain a pleading on motion to dismiss. *Pfleuger v Pfleuger*, 304 N.Y. 148, 106 N.E.2d 495, 304 N.Y. (N.Y.S.) 148, 1952 N.Y. LEXIS 764 (N.Y. 1952).

On motion under RCP 106, subdivision 4 (Rule 3211(a)(7) herein) the court could not consider matters beyond the face of the complaint except insofar as it might take judicial notice of them.

St. Regis Tribe of Mohawk Indians v State, 5 N.Y.2d 24, 177 N.Y.S.2d 289, 152 N.E.2d 411, 1958 N.Y. LEXIS 843 (N.Y. 1958), reh'g denied, 5 N.Y.2d 793, 1958 N.Y. LEXIS 1688 (N.Y. 1958), cert. denied, 359 U.S. 910, 79 S. Ct. 586, 3 L. Ed. 2d 573, 1959 U.S. LEXIS 1538 (U.S. 1959).

CPA § 344-a was applied to motion to dismiss affirmative defense in answer. Meijer v General Cigar Co., 273 A.D. 760, 75 N.Y.S.2d 536, 1947 N.Y. App. Div. LEXIS 3036 (N.Y. App. Div. 1947).

The court on motions addressed to the pleadings and for summary judgment may take judicial notice of the laws of sister states, and may interpret such laws. Dotson v Easley, 28 Misc. 2d 456, 209 N.Y.S.2d 1014, 1960 N.Y. Misc. LEXIS 2100 (N.Y. Sup. Ct. 1960).

## **21. Manner of taking judicial notice, duties of counsel and court**

In action involving existence of Mexican embargo, where counsel did not request court to take judicial notice of existence of such embargo nor refer to information thereof, Court of Appeals declined to exercise its discretion under CPA § 344-a, but ordered new trial on such issue. Wagner v Derecktor, 306 N.Y. 386, 118 N.E.2d 570, 306 N.Y. (N.Y.S.) 386, 1954 N.Y. LEXIS 1027 (N.Y. 1954), reh'g denied, 2 N.Y.2d 756, 1956 N.Y. LEXIS 1312 (N.Y. 1956).

Interests of justice may require court to decide new question first raised on appeal, on basis of cases submitted by counsel, aided by court's own research. In re Peart's Estate, 277 A.D. 61, 97 N.Y.S.2d 879, 1950 N.Y. App. Div. LEXIS 2995 (N.Y. App. Div. 1950).

Court has no right to decide cases on his own private discoveries of foreign law or on his own translation of foreign languages. Arams v Arams, 45 N.Y.S.2d 251, 182 Misc. 328, 1943 N.Y. Misc. LEXIS 2938 (N.Y. Sup. Ct. 1943).

Surrogate judicially noticed French law as to validity of gifts, and accepted opinion of French expert who supported his opinion by French decisions and commentators and statutes. In re

Bloch's Estate, 54 N.Y.S.2d 57, 186 Misc. 705, 1945 N.Y. Misc. LEXIS 1641 (N.Y. Sur. Ct. 1945).

In action against Swiss bank hired to keep bonds safely, in absence of evidence of Swiss law, case was decided by reference to New York law. *Albers v Credit Suisse*, 67 N.Y.S.2d 239, 188 Misc. 229, 1946 N.Y. Misc. LEXIS 3218 (N.Y. City Ct. 1946).

Formal proof of foreign law on trial of action may be required by court in exercise of its discretion, though court may acquaint itself by independent research. *Ackermann v Union Bank of Switzerland*, 83 N.Y.S.2d 666, 193 Misc. 210, 1948 N.Y. Misc. LEXIS 3406 (N.Y. Sup. Ct. 1948).

Surrogate refused to notice Italian law governing validity of contract involving dollar transfers, where parties did not indicate law upon which they relied. *In re Mason's Estate*, 86 N.Y.S.2d 232, 194 Misc. 308, 1948 N.Y. Misc. LEXIS 3890 (N.Y. Sur. Ct. 1948).

CPA § 344-a gave court discretionary power to take judicial notice of foreign law, but court did not need to make independent research. *Bril v Suomen Pankki Finlands Bank*, 97 N.Y.S.2d 22, 199 Misc. 11, 1950 N.Y. Misc. LEXIS 2599 (N.Y. Sup. Ct.), app. dismissed, 101 N.Y.S.2d 256 (N.Y. App. Div. 1950).

Where law varies from state to state, there should be “commencement of proof” supplied by one side or other to orient judge pursuing his inquiries. *Mandelbaum v Silberfeld*, 77 N.Y.S.2d 465, 1944 N.Y. Misc. LEXIS 2813 (N.Y. City Ct. 1944).

Though court may take judicial notice of law of foreign country, it may accept submitted proof thereof. *Petition of Altman*, 138 N.Y.S.2d 336, 1954 N.Y. Misc. LEXIS 2962 (N.Y. Sur. Ct. 1954).

Though court may take judicial notice of laws of State of Israel, court may accept proof of its laws and ordinances, conferring upon infant over 18 years of age right to possession, management and control of his property. *Petition of Altman*, 138 N.Y.S.2d 336, 1954 N.Y. Misc. LEXIS 2962 (N.Y. Sur. Ct. 1954).

It is error for a trial judge, under the guise of judicial notice, to substitute his own personal knowledge for evidence as to the grade of the streets where an accident occurred. *Castello v Cassidy*, 210 N.Y.S.2d 46 (N.Y. Sup. Ct. 1960).

## **B. Foreign Law**

### **22. Generally**

The purpose of CPA § 344-a, as to foreign law, was to formulate procedure to obviate the formal legal requirement of proving as a fact the statute or law of a foreign country or a sister state, where a party relies thereon. *Pfleuger v Pfleuger*, 304 N.Y. 148, 106 N.E.2d 495, 304 N.Y. (N.Y.S.) 148, 1952 N.Y. LEXIS 764 (N.Y. 1952).

Party who wishes to avoid risk of an adverse exercise of discretion may properly plead relevant laws of other states so as to be in position to prove them should court decide not to take judicial notice of them. *Kipp v International Harvester Co.*, 11 A.D.2d 896, 202 N.Y.S.2d 959, 1960 N.Y. App. Div. LEXIS 8742 (N.Y. App. Div. 4th Dep't 1960).

Hearing will not be granted in order to prove foreign statute, since judicial notice may be taken thereof. *In re Bishop's Estate*, 129 N.Y.S.2d 387, 206 Misc. 7 (1954), *aff'd*, 1 A.D.2d 612, 152 N.Y.S.2d 310, 1956 N.Y. App. Div. LEXIS 5094 (N.Y. App. Div. 1st Dep't 1956).

The court may take judicial notice of foreign documents relating to birth, marriage, divorce, death, census and probate records offered in evidence. *In re Smith's Estate*, 9 Misc. 2d 800, 166 N.Y.S.2d 648, 1957 N.Y. Misc. LEXIS 2400 (N.Y. Sur. Ct. 1957), *app. dismissed*, 6 A.D.2d 1047, 179 N.Y.S.2d 657 (N.Y. App. Div. 2d Dep't 1958).

In proceeding to settle public administrator's account, the court took judicial notice of the documentary record of births and deaths and determined which claimants were in the closest range degree of consanguinity and were thereby entitled to share in the net estate. *In re Smith's*

Estate, 9 Misc. 2d 800, 166 N.Y.S.2d 648, 1957 N.Y. Misc. LEXIS 2400 (N.Y. Sur. Ct. 1957), app. dismissed, 6 A.D.2d 1047, 179 N.Y.S.2d 657 (N.Y. App. Div. 2d Dep't 1958).

### **23. Pleading foreign law**

A court may take judicial notice of the law of a foreign country or of a sister state although the pleadings do not specify the law as to which judicial notice is to be taken. *Pfleuger v Pfleuger*, 304 N.Y. 148, 106 N.E.2d 495, 304 N.Y. (N.Y.S.) 148, 1952 N.Y. LEXIS 764 (N.Y. 1952).

Plaintiff could not ask court to take judicial notice of foreign laws where merely their purported effect was pleaded in complete disregard of requirement of plain and concise statement of material facts recited in CPA § 241 (Rule 3014 herein). *Greiner v Freund*, 286 A.D. 996, 144 N.Y.S.2d 766, 1955 N.Y. App. Div. LEXIS 4892 (N.Y. App. Div. 1955).

Complaint in replevin for stock allegedly converted in Switzerland need not allege law thereof upon subject. *Arams v Arams*, 45 N.Y.S.2d 251, 182 Misc. 328, 1943 N.Y. Misc. LEXIS 2938 (N.Y. Sup. Ct. 1943).

Where complaint alleges facts creating obligation under foreign law, it need not specifically allege such law. *Silberfeld v Swiss Bank Corp.*, 50 N.Y.S.2d 838, 183 Misc. 234, 1944 N.Y. Misc. LEXIS 2421 (N.Y. Sup. Ct.), *aff'd*, 268 A.D. 984, 52 N.Y.S.2d 583, 1944 N.Y. App. Div. LEXIS 4555 (N.Y. App. Div. 1944).

Complaint need not set out foreign law under which foreign divorce decree was entered. *Raphael v Raphael*, 71 N.Y.S.2d 42, 189 Misc. 144, 1947 N.Y. Misc. LEXIS 2501 (N.Y. Sup. Ct. 1947).

Where plaintiff relied for his rights on foreign statute, his pleading must be sufficient to enable defendant to controvert factual issue. *Schumann v Loew's Inc.*, 102 N.Y.S.2d 572, 199 Misc. 38, 1951 N.Y. Misc. LEXIS 1530 (N.Y. Sup. Ct. 1951).

Complaint alleging that foreign marriage was void for failure to comply with laws of foreign state where contracted, must allege facts showing such invalidity. *Carbone v Carbone*, 109 N.Y.S.2d 853, 200 Misc. 437, 1951 N.Y. Misc. LEXIS 2755 (N.Y. Sup. Ct. 1951).

Court may in its discretion take judicial notice of Italian law despite fact that law is not pleaded. *Mangrelli v Italian Line*, 144 N.Y.S.2d 570, 208 Misc. 685, 1955 N.Y. Misc. LEXIS 3782 (N.Y. Sup. Ct. 1955).

In an action for an accounting under an alleged oral agreement executed in West Germany, court would not take judicial notice of West German laws where only their purported effect was pleaded. *Szarf v Blumenfeld*, 7 Misc. 2d 181, 163 N.Y.S.2d 249, 1957 N.Y. Misc. LEXIS 3235 (N.Y. Sup. Ct. 1957), rev'd, 5 A.D.2d 887, 172 N.Y.S.2d 984, 1958 N.Y. App. Div. LEXIS 6547 (N.Y. App. Div. 2d Dep't 1958).

Failure to plead foreign law does not preclude court from taking judicial notice thereof. *Everts v De Bernardi*, 98 N.Y.S.2d 103, 1950 N.Y. Misc. LEXIS 1742 (N.Y. App. Term 1950).

#### **24. —In federal courts**

Pleading of foreign law is necessary in federal court under Fed Rules of Civ Proc 26(b), 43(a), and this section does not apply. *Empresa Agricola Chicama, Ltda. v Amtorg Trading Corp.*, 57 F. Supp. 649, 1944 U.S. Dist. LEXIS 1778 (D.N.Y. 1944).

#### **25. —Former rule**

Prior to the enactment of CPA § 344-a, foreign law was a fact and had to be pleaded. *Audley v Townsend*, 126 A.D. 431, 110 N.Y.S. 575, 1908 N.Y. App. Div. LEXIS 3372 (N.Y. App. Div. 1908).

#### **26. Effect of bill of particulars as to foreign law**

Bill of particulars as to foreign law cannot limit issues in action. *Kraus v Kraus*, 51 N.Y.S.2d 886, 183 Misc. 667, 1944 N.Y. Misc. LEXIS 2627 (N.Y. Sup. Ct. 1944).

## **27. Determination of issue of law or fact**

Factual issue, due to conflicting affidavits as to law of sister state, can be determined only by trial, and this section does not change such situation. *Chappell v Chappell*, 60 N.Y.S.2d 447, 186 Misc. 968, 1945 N.Y. Misc. LEXIS 2682 (N.Y. Sup. Ct. 1945).

Theory of CPA § 344-a was that foreign law was matter of fact. *In re Palmer's Estate*, 82 N.Y.S.2d 818, 193 Misc. 411, 1948 N.Y. Misc. LEXIS 3234 (N.Y. Sur. Ct. 1948), *aff'd*, 275 A.D. 792, 90 N.Y.S.2d 179 (N.Y. App. Div. 1949).

Where action on a contract was brought against defendant on an illegal arrangement made in Italy it was incumbent upon the court under CPA § 344-a to determine law of Italy as it affected the facts in the case and the court could take judicial notice of the applicable laws of Italy and also hear testimony of an expert on Italian law, decrees and decisions. *Southwestern Shipping Corp. v National City Bank*, 11 Misc. 2d 397, 173 N.Y.S.2d 509, 1958 N.Y. Misc. LEXIS 3689 (N.Y. Sup. Ct.), *aff'd*, 6 A.D.2d 1036, 178 N.Y.S.2d 1019, 1958 N.Y. App. Div. LEXIS 4547 (N.Y. App. Div. 1st Dep't 1958).

Foreign law is to be treated as a matter of law in this state (CPA 344-a, subd B). *Phillips v Phillips*, 15 Misc. 2d 884, 180 N.Y.S.2d 475, 1958 N.Y. Misc. LEXIS 2539 (N.Y. Sup. Ct. 1958).

Although generally summary judgment will be denied where foreign law is involved, it being a question of fact, yet where no factual question concerning the meaning or construction of law is raised, and such law is so clear as to warrant the court on a trial to charge it as a matter of law, no triable issue exists thereby, and the court may exercise its discretion to judicially notice the foreign law and to grant summary judgment on the basis of it. *Tuffarella v Erie R. Co.*, 33 Misc. 2d 1040, 226 N.Y.S.2d 87, 1962 N.Y. Misc. LEXIS 3771 (N.Y. Sup. Ct.), *aff'd*, 17 A.D.2d 484, 236 N.Y.S.2d 503, 1962 N.Y. App. Div. LEXIS 6238 (N.Y. App. Div. 2d Dep't 1962).

Issue as to foreign law can be determined only on trial. *Valentine v Valentine*, 109 N.Y.S.2d 466, 1951 N.Y. Misc. LEXIS 2693 (N.Y. Sup. Ct. 1951).

Where parties are in sharp disagreement as to whether Louisiana statute authorizing action for personal injuries received in such state to be brought directly against liability insurer of owner of injuring car is substantive or procedural, and whether statute requiring action to be brought in particular district in Louisiana is jurisdictional, interpretation to be given in Louisiana statutes and common law are factual matters which should be established on trial and not on motion for summary judgment. *Morton v Maryland Casualty Co.*, 134 N.Y.S.2d 209, 1954 N.Y. Misc. LEXIS 2502 (N.Y. Sup. Ct. 1954), rev'd, 1 A.D.2d 116, 148 N.Y.S.2d 524, 1955 N.Y. App. Div. LEXIS 3637 (N.Y. App. Div. 2d Dep't 1955).

Interpretation of foreign law is question of fact, and not one of law, though court may judicially notice law of foreign countries. *Murphy v Bankers Commercial Corp.*, 111 F. Supp. 608, 1953 U.S. Dist. LEXIS 2995 (D.N.Y. 1953).

## **28. Discretion**

In passing upon sufficiency of pleading, Special Term may take or refuse to take judicial notice of specified matters of foreign law, depending upon deterrent factors of time, cost and other adverse considerations. *Pfleuger v Pfleuger*, 304 N.Y. 148, 106 N.E.2d 495, 304 N.Y. (N.Y.S.) 148, 1952 N.Y. LEXIS 764 (N.Y. 1952).

The court's discretion to refuse judicial notice is broader as a practical matter, with respect to the laws of a foreign country, where there are deterrent factors of time, cost and the like, than is the case with respect to the laws of a sister state where such factors are generally of less consequence. *Pfleuger v Pfleuger*, 304 N.Y. 148, 106 N.E.2d 495, 304 N.Y. (N.Y.S.) 148, 1952 N.Y. LEXIS 764 (N.Y. 1952).



On motion addressed to pleadings it is discretionary with court whether to take judicial notice of foreign law. *Fink v Bradford*, 284 A.D. 945, 134 N.Y.S.2d 743, 1954 N.Y. App. Div. LEXIS 4148 (N.Y. App. Div. 1954).

The court may take judicial notice of foreign law or may acquaint itself with such law by independent research or may direct that formal proof thereof be offered at trial; absent any of the alternatives, the court will apply New York law. *Cohen v Gilbert*, 12 A.D.2d 301, 210 N.Y.S.2d 895, 1961 N.Y. App. Div. LEXIS 12587 (N.Y. App. Div. 1st Dep't 1961).

Proof of foreign law is in discretion of trial court. *Kraus v Kraus*, 51 N.Y.S.2d 886, 183 Misc. 667, 1944 N.Y. Misc. LEXIS 2627 (N.Y. Sup. Ct. 1944).

New York courts, including Special Term, have discretionary power to take judicial notice of foreign statute or law, depending upon deterring factors of time, cost and other adverse considerations. *De Sairigne v Gould*, 3 Misc. 2d 452, 148 N.Y.S.2d 57, 1955 N.Y. Misc. LEXIS 2169 (N.Y. Sup. Ct. 1955), *aff'd*, 1 A.D.2d 820, 150 N.Y.S.2d 152, 1956 N.Y. App. Div. LEXIS 6227 (N.Y. App. Div. 1st Dep't 1956).

Conflicting affidavits as to construction of foreign law governing checks, justified Special Term in not exercising its discretion to take judicial notice of disputed foreign law, where such conflict cannot be resolved without further and independent proof. *De Sairigne v Gould*, 3 Misc. 2d 452, 148 N.Y.S.2d 57, 1955 N.Y. Misc. LEXIS 2169 (N.Y. Sup. Ct. 1955), *aff'd*, 1 A.D.2d 820, 150 N.Y.S.2d 152, 1956 N.Y. App. Div. LEXIS 6227 (N.Y. App. Div. 1st Dep't 1956).

Where claims in libel and intentional infliction of harm presented questions of such nicety that it seemed unlikely that they constituted a wrong in the foreign country, and that no difficulty would be encountered in making available to the court accurate knowledge of such foreign law, the court declined to take judicial notice of the foreign law as a matter of discretion. *Andretto Bank A. G. v Goodbody & Co.*, 15 Misc. 2d 395, 181 N.Y.S.2d 343, 1958 N.Y. Misc. LEXIS 2389 (N.Y. Sup. Ct. 1958).

Where judicial notice of law of another country is involved, discretion of court should be exercised with caution. *Berg v Oriental Consol. Mining Co.*, 70 N.Y.S.2d 19, 1947 N.Y. Misc. LEXIS 2334 (N.Y. Sup. Ct. 1947).

In action for personal injuries to steamship passenger on high seas, where contract ticket provided that all questions be decided by English law, neither pleaded nor proved in trial court, it is within discretion of appellate court to consider whether English law supports plaintiff's position. *Siegelman v Cunard White Star, Ltd.*, 221 F.2d 189, 1955 U.S. App. LEXIS 4779 (2d Cir. N.Y. 1955).

Where comprehension of foreign law is not easy, court abuses its discretion if it takes judicial notice of foreign law when it is not pleaded, unless party who would otherwise have burden of proving such law has in some way adequately assisted court in judicially learning it. *Walton v Arabian American Oil Co.*, 233 F.2d 541, 1956 U.S. App. LEXIS 3183 (2d Cir. N.Y.), cert. denied, 352 U.S. 872, 77 S. Ct. 97, 1 L. Ed. 2d 77, 1956 U.S. LEXIS 380 (U.S. 1956).

## **29. Law of another country**

Court would not assume that maritime law of Panama was same as United States maritime law, nor judicially notice Panama law. *Sonnesen v Panama Transport Co.*, 298 N.Y. 262, 82 N.E.2d 569, 298 N.Y. (N.Y.S.) 262, 1948 N.Y. LEXIS 790 (N.Y. 1948), reh'g denied, 298 N.Y. 856, 84 N.E.2d 324, 298 N.Y. (N.Y.S.) 856, 1949 N.Y. LEXIS 1715 (N.Y. 1949), cert. denied, 337 U.S. 919, 69 S. Ct. 1157, 93 L. Ed. 1729, 1949 U.S. LEXIS 2383 (U.S. 1949), reh'g denied, 337 U.S. 961, 69 S. Ct. 1530, 93 L. Ed. 1760, 1949 U.S. LEXIS 2143 (U.S. 1949).

Netherlands statutes judicially noticed and construed to determine whether plaintiff was stockholder or creditor of foreign corporation. *Rothschild v Naamlouze Vennootschap Gebroeders Pappenheim's Tabakshandel*, 87 N.Y.S.2d 189, 194 Misc. 479, 1949 N.Y. Misc. LEXIS 1893 (N.Y. Sup. Ct. 1949).

Judicial notice was taken that Free State of Israel first came into existence in May, 1948, and complaint, containing no allegation as to what country's intestacy laws control disposition of property in Israel in 1942, was insufficient. *Bergman v Lax*, 107 N.Y.S.2d 266, 1951 N.Y. Misc. LEXIS 2331 (N.Y. Sup. Ct. 1951).

Surrogate may take judicial notice of estate law of Holland in proceeding on contested right of election of widow to estate of decedent. *In re Baruch's Estate*, 131 N.Y.S.2d 84, 1954 N.Y. Misc. LEXIS 2111 (N.Y. Sur. Ct. 1954).

### **30. Law of a sister state**

Statutes and common law of New Jersey judicially noticed. *Jongebloed v Erie R. Co.*, 296 N.Y. 994, 73 N.E.2d 570, 296 N.Y. (N.Y.S.) 994, 1947 N.Y. LEXIS 1733 (N.Y. 1947).

In death action arising out of injuries sustained in Ohio while intestate was passenger in individual defendant's automobile driven in corporate defendant's business, it was proper to strike out paragraphs of corporate defendant's answer pleading Ohio law as to right to sue master and servant jointly, since joinder is a question of procedural law governed by law of the forum. *Kipp v International Harvester Co.*, 11 A.D.2d 896, 202 N.Y.S.2d 959, 1960 N.Y. App. Div. LEXIS 8742 (N.Y. App. Div. 4th Dep't 1960).

The court may take judicial notice of foreign law or may acquaint itself with such law by independent research or may direct that formal proof thereof be offered at trial; absent any of the alternatives, the court will apply New York law. *Cohen v Gilbert*, 12 A.D.2d 301, 210 N.Y.S.2d 895, 1961 N.Y. App. Div. LEXIS 12587 (N.Y. App. Div. 1st Dep't 1961).

Pennsylvania case law judicially noticed. *Verbeck v Verbeck*, 65 N.Y.S.2d 265, 187 Misc. 750, 1946 N.Y. Misc. LEXIS 2802 (N.Y. Sup. Ct. 1946).

New Jersey statute, governing sale of goods, was judicially noticed. *Zendman v Harry Winston, Inc.*, 94 N.Y.S.2d 878, 196 Misc. 924, 1949 N.Y. Misc. LEXIS 3139 (N.Y. Sup. Ct. 1949), rev'd, 279 A.D. 28, 107 N.Y.S.2d 618, 1951 N.Y. App. Div. LEXIS 2852 (N.Y. App. Div. 1951).

Court may take judicial notice that real estate broker in Massachusetts is not required to have license. *Copellman v Rabinowitz*, 143 N.Y.S.2d 496, 208 Misc. 274, 1955 N.Y. Misc. LEXIS 2866 (N.Y. City Ct. 1955).

Motion to amend answer in personal injury action arising out of automobile accident in sister state so as to plead that state's guest statute was denied as unnecessary since court was authorized by CPA § 344-a to take judicial notice of statute of sister state, whether or not they were pleaded. *Glantz v Fishbein*, 21 Misc. 2d 945, 198 N.Y.S.2d 669, 1960 N.Y. Misc. LEXIS 3447 (N.Y. Sup. Ct. 1960).

The court on motions addressed to the pleadings and for summary judgment may take judicial notice of the laws of sister states, and may interpret such laws. *Dotson v Easley*, 28 Misc. 2d 456, 209 N.Y.S.2d 1014, 1960 N.Y. Misc. LEXIS 2100 (N.Y. Sup. Ct. 1960).

Although generally summary judgment will be denied where foreign law is involved, it being a question of fact, yet where no factual question concerning the meaning or construction of law is raised, and such law is so clear as to warrant the court on a trial to charge it as a matter of law, no triable issue exists thereby, and the court may exercise its discretion to judicially notice the foreign law and to grant summary judgment on the basis of it. *Tuffarella v Erie R. Co.*, 33 Misc. 2d 1040, 226 N.Y.S.2d 87, 1962 N.Y. Misc. LEXIS 3771 (N.Y. Sup. Ct.), *aff'd*, 17 A.D.2d 484, 236 N.Y.S.2d 503, 1962 N.Y. App. Div. LEXIS 6238 (N.Y. App. Div. 2d Dep't 1962).

New York supreme court may take judicial notice of law of New Jersey and that its chancery court is court of record and of general jurisdiction. *Landis v Landis*, 55 N.Y.S.2d 228, 1945 N.Y. Misc. LEXIS 1826 (N.Y. Sup. Ct. 1945).

Statute of limitations of New Jersey may be noticed. *Silver v Smith*, 70 N.Y.S.2d 122, 1947 N.Y. Misc. LEXIS 2356 (N.Y. Sup. Ct. 1947).

New Jersey law as to wills may be judicially noticed. *In re Sherman's Will*, 71 N.Y.S.2d 492, 1947 N.Y. Misc. LEXIS 2584 (N.Y. Sup. Ct. 1947).

In diversity action in Federal District Court, in action for personal injuries sustained in automobile accident in New Jersey, court may take judicial notice of laws and decisions of such state. *Colello v Sundquist*, 137 F. Supp. 649, 1955 U.S. Dist. LEXIS 2336 (D.N.Y. 1955), *aff'd*, 229 F.2d 737, 1956 U.S. App. LEXIS 3619 (2d Cir. N.Y. 1956).

### **31. —Wrongful death statutes**

In death action arising out of injuries sustained in Ohio while intestate was passenger in individual defendant's automobile allegedly driven in corporate defendant's business, it was held error to strike out paragraphs of answer which pleaded substance of Ohio decisions construing Ohio guest statute, and Ohio decisional law as to what constitutes scope of employment for purpose of determining master-servant liability, since it was proper to plead substance of relevant decisional law of another state. *Kipp v International Harvester Co.*, 11 A.D.2d 896, 202 N.Y.S.2d 959, 1960 N.Y. App. Div. LEXIS 8742 (N.Y. App. Div. 4th Dep't 1960).

Massachusetts statute, relating to negligence of railroad corporation, was judicially noticed in action by executrix of her deceased husband killed in Massachusetts when struck by railroad caboose. *White v Boston & M. R. R.*, 126 N.Y.S.2d 787, 204 Misc. 672, 1953 N.Y. Misc. LEXIS 2496 (N.Y. Sup. Ct. 1953), *aff'd*, 283 A.D. 482, 129 N.Y.S.2d 15, 1954 N.Y. App. Div. LEXIS 4712 (N.Y. App. Div. 1954).

Fact Pennsylvania law on subject of distribution of proceeds of settlement of death action may be difficult does not warrant retention of Pennsylvania attorney as expert to find law, since court may take judicial notice thereof. *Blue v United Air Lines*, 115 N.Y.S.2d 327, 1952 N.Y. Misc. LEXIS 1670 (N.Y. Sup. Ct. 1952).

### **32. —Matrimonial matters**

In action for fraud inducing wife to sign separation agreement inadequate for her support, court may judicially notice New Jersey statute empowering court granting divorce to later amend its

provisions as to alimony of wife. *Weintraub v Weintraub*, 302 N.Y. 104, 96 N.E.2d 724, 302 N.Y. (N.Y.S.) 104, 1951 N.Y. LEXIS 756 (N.Y. 1951).

As to conflict of laws governing remarriage of divorced spouse, see *In re Palmer's Estate*, 79 N.Y.S.2d 404, 192 Misc. 385, 1948 N.Y. Misc. LEXIS 2411 (N.Y. Sur. Ct. 1948).

District of Columbia statutes, relating to marriage by proxy, were judicially noticed. *Ferraro v Ferraro*, 77 N.Y.S.2d 246, 192 Misc. 484, 1948 N.Y. Misc. LEXIS 2140 (N.Y. Dom. Rel. Ct. 1948), *aff'd in part*, 275 A.D. 777, 87 N.Y.S.2d 707, 1949 N.Y. App. Div. LEXIS 4435 (N.Y. App. Div. 1949).

In action to recover accrued alimony, Virginia statute noticed. *Ferentinos v Ferentinos*, 90 N.Y.S.2d 147, 195 Misc. 641, 1949 N.Y. Misc. LEXIS 2382 (N.Y. Mun. Ct. 1949).

Where husband secured a Nevada divorce decree from his former wife and later married another woman and sought annulment of the marriage, he was precluded by public policy from attacking decree on ground of his residence. New York court would take judicial notice of whether the Nevada statutes which were in effect at the time of the Nevada decree and the modified Nevada decree established defendant wife's appearance *nunc pro tunc* in Nevada. *Hollis v Hollis*, 6 Misc. 2d 208, 159 N.Y.S.2d 917, 1957 N.Y. Misc. LEXIS 3429 (N.Y. Sup. Ct. 1957).

Pursuant to CPA § 344-a, court could examine statutes and case law of Nevada as to finality of divorce decree as to past due instalments of alimony and maintenance. *Lichtman v Lichtman*, 63 N.Y.S.2d 368, 1946 N.Y. Misc. LEXIS 2396 (N.Y. Sup. Ct. 1946).

Court may judicially notice provisions of Florida statute authorizing Florida court to increase or decrease amount of future alimony. *Stern v Stern*, 132 N.Y.S.2d 817, 1954 N.Y. Misc. LEXIS 2694 (N.Y. Sup. Ct. 1954).

### **C. Local Law and Ordinances; Official Rules and Regulations**

### **33. Ordinances**

Village speed ordinance was judicially noticed by county court on appeal from conviction in village police court. *People v Space*, 51 N.Y.S.2d 509, 182 Misc. 783, 1944 N.Y. Misc. LEXIS 2563 (N.Y. County Ct. 1944).

Ordinance, governing speed in village, may be judicially noticed by trial and appellate courts. *People v Resciniti*, 81 N.Y.S.2d 338, 191 Misc. 719, 1948 N.Y. Misc. LEXIS 2780 (N.Y. County Ct. 1948); *People v Churchill*, 16 Misc. 2d 102, 184 N.Y.S.2d 265, 1959 N.Y. Misc. LEXIS 4109 (N.Y. County Ct. 1959).

Refusal of municipal court trial judge to take judicial notice of city ordinances pertaining to vehicular traffic was error. *Astrella v Schrader*, 106 N.Y.S.2d 925, 200 Misc. 245, 1951 N.Y. Misc. LEXIS 2259 (N.Y. App. Term 1951).

The court can take judicial notice of a local ordinance regulating traffic signs designating permissible speed but cannot take judicial notice of compliance therewith. *People v Zambito*, 21 Misc. 2d 815, 194 N.Y.S.2d 724, 1959 N.Y. Misc. LEXIS 2343 (N.Y. County Ct. 1959).

See *Jayne Estates, Inc. v Merritt* (1960, Sup) 210 NYS2d 252, where court in the exercise of its discretion took judicial notice of municipal resolutions and proceedings.

### **34. Boards of education**

Salary schedules of schoolteachers are public documents, judicially noticed by court. *Wakefield v Board of Education*, 79 N.Y.S.2d 420, 192 Misc. 639, 1948 N.Y. Misc. LEXIS 2415 (N.Y. Sup. Ct.), modified, 274 A.D. 884, 84 N.Y.S.2d 700, 1948 N.Y. App. Div. LEXIS 3877 (N.Y. App. Div. 1948).

In action by employee of City College for declaration of rights as such employee, court may judicially notice various resolutions of board of higher education. *Condon v Board of Higher*

Education, 131 N.Y.S.2d 87, 1954 N.Y. Misc. LEXIS 2112 (N.Y. Sup. Ct. 1954), aff'd, 286 A.D. 804, 143 N.Y.S.2d 617, 1955 N.Y. App. Div. LEXIS 4160 (N.Y. App. Div. 1955).

### **35. City charter**

A court may take judicial notice of a city charter. *People v Moskal*, 9 A.D.2d 369, 194 N.Y.S.2d 118, 1959 N.Y. App. Div. LEXIS 5402 (N.Y. App. Div. 4th Dep't 1959).

### **36. Public Service Commission**

Public Service Commission rule, requiring heating of passenger omnibus, was judicially noticed by Court of Appeals. *Owen v Rochester-Penfield Bus Co.*, 304 N.Y. 457, 108 N.E.2d 606, 304 N.Y. (N.Y.S.) 457, 1952 N.Y. LEXIS 729 (N.Y. 1952).

Public Service Commission report, showing that New York corporation was controlled through ownership of its entire capital stock of Delaware corporation, was judicially noticed by Appellate Division. *Sease v Central Greyhound Lines*, 281 A.D. 192, 118 N.Y.S.2d 433, 1952 N.Y. App. Div. LEXIS 3093 (N.Y. App. Div. 1952), rev'd, 306 N.Y. 284, 117 N.E.2d 899, 306 N.Y. (N.Y.S.) 284, 1954 N.Y. LEXIS 1035 (N.Y. 1954).

### **37. State Traffic Commission rules and regulations**

Justice of peace, trying traffic speed violation, could take judicial notice of certificate of State Traffic Commission, stating that there is no rule or regulation permitting speed in excess of 50 miles per hour on any highway in New York. *People v Thomas*, 105 N.Y.S.2d 611, 199 Misc. 163, 1950 N.Y. Misc. LEXIS 2522 (N.Y. County Ct. 1950).

Where motorist was charged with driving in excess of 50 miles per hour, court would not take judicial notice of absence of any rule or regulation of State Traffic Commission permitting speed in excess of 50 miles. *People v Palumbo*, 130 N.Y.S.2d 583, 1953 N.Y. Misc. LEXIS 2657 (N.Y. County Ct. 1953).



### **38. Tax regulations**

Resolutions of city council, adopting tax law provisions for summary foreclosure of tax liens, may be judicially noticed. *In re New Rochelle*, 46 N.Y.S.2d 645, 182 Misc. 176, 1943 N.Y. Misc. LEXIS 2804 (N.Y. County Ct. 1943), *aff'd*, 268 A.D. 182, 49 N.Y.S.2d 673, 1944 N.Y. App. Div. LEXIS 3140 (N.Y. App. Div. 1944).

Where an assessment record contains statutory oath of assessor, and is a matter of public record, the court will take judicial notice that on its face assessor's oath complied with statute. *Cedzich v New York*, 19 Misc. 2d 572, 190 N.Y.S.2d 167, 1959 N.Y. Misc. LEXIS 3274 (N.Y. Sup. Ct. 1959).

### **39. Federal regulations**

Court of Appeals will consider Federal regulations, not as read at trial, but as they appear in present form since rights and legal relations are to be determined as of time they are declared. *Quaker Oats Co. v New York*, 295 N.Y. 527, 68 N.E.2d 593, 295 N.Y. (N.Y.S.) 527, 1946 N.Y. LEXIS 810 (N.Y. 1946), *aff'd*, *Hill Packing Co. v New York*, 331 U.S. 787, 67 S. Ct. 1314, 91 L. Ed. 1817, 1947 U.S. LEXIS 2294 (U.S. 1947).

Veteran's Emergency Housing Program order, issued by Civil Production Administration, was judicially noticed. *Gilpin v Mutual Life Ins. Co.*, 271 A.D. 499, 66 N.Y.S.2d 831, 1946 N.Y. App. Div. LEXIS 2786 (N.Y. App. Div. 1946), *rev'd*, 299 N.Y. 253, 86 N.E.2d 737, 299 N.Y. (N.Y.S.) 253, 1949 N.Y. LEXIS 975 (N.Y. 1949).

Regulations prescribed by Federal Home Loan Bank have force of law and are subject of judicial notice. *Century Federal Sav. & Loan Ass'n v Sullivan*, 116 N.Y.S.2d 323, 1952 N.Y. Misc. LEXIS 1870 (N.Y. Sup. Ct. 1952), *modified*, 281 A.D. 830, 118 N.Y.S.2d 479, 1953 N.Y. App. Div. LEXIS 3465 (N.Y. App. Div. 1953).

#### **40. War and emergency restrictions**

OPA regulations may be judicially noticed by courts. *People ex rel. Liebert v Lipoff*, 45 N.Y.S.2d 636, 181 Misc. 618, 1943 N.Y. Misc. LEXIS 2680 (N.Y. Magis. Ct. 1943).

OPA price regulations, governing sale of buses, were judicially noticed in action for brokerage commissions. *Slack v Glenwood Sightseeing Bus Co.*, 47 N.Y.S.2d 876, 181 Misc. 988, 1944 N.Y. Misc. LEXIS 1869 (N.Y. City Ct. 1944).

Emergency Price Control Act and rulings and ceiling prices fixed thereunder were judicially noticed in action by buyer against seller to recover sum in excess of ceiling price. *Sommer v E. B. Kelly Co.*, 47 N.Y.S.2d 57, 182 Misc. 157, 1944 N.Y. Misc. LEXIS 1716 (N.Y. City Ct.), rev'd, 50 N.Y.S.2d 66, 182 Misc. 119, 1944 N.Y. Misc. LEXIS 2267 (N.Y. App. Term 1944).

Executive rules and regulations, governing permits and priorities to construct new building during wartime, would not be judicially noticed by court because of their multiplicity. *M. H. Fishman Co. v Sky Realty Corp.*, 83 N.Y.S.2d 910, 1948 N.Y. Misc. LEXIS 3475 (N.Y. Sup. Ct. 1948).

#### **41. Miscellaneous rules, regulations and requirements**

Departmental rules and regulations governing canal navigation were judicially noticed by Court of Claims. *Hart v State*, 78 N.Y.S.2d 734, 192 Misc. 492, 1948 N.Y. Misc. LEXIS 2307 (N.Y. Ct. Cl. 1948).

State park rules were judicially noticed in action by motorist for injuries received in state park. *Mitchell v State*, 85 N.Y.S.2d 80, 193 Misc. 507, 1948 N.Y. Misc. LEXIS 3714 (N.Y. Ct. Cl. 1948).

Refusal of municipal court trial judge to take judicial notice of Police Department rules and regulations pertaining to vehicular traffic, was error. *Astrella v Schrader*, 106 N.Y.S.2d 925, 200 Misc. 245, 1951 N.Y. Misc. LEXIS 2259 (N.Y. App. Term 1951).

The court may take judicial notice of postal requirements providing for the forwarding of both ordinary and registered mail. *Caruso v Bard*, 20 Misc. 2d 887, 194 N.Y.S.2d 535, 1959 N.Y. Misc. LEXIS 2542 (N.Y. Sup. Ct. 1959).

Court can take judicial notice of a rule or regulation of an executive department, public board, agency or officer of the state. *People v Johnson*, 23 Misc. 2d 11, 196 N.Y.S.2d 227, 1960 N.Y. Misc. LEXIS 3616 (N.Y. County Ct. 1960)(rules of Thruway Authority governing maximum speed thereon).

In prosecution for violating rules and regulations of interstate park commission forbidding advertising without a permit, absent any issue, trial court could take judicial notice of such rules and regulations. *People v Apostle*, 30 Misc. 2d 55, 214 N.Y.S.2d 101, 1961 N.Y. Misc. LEXIS 3005 (N.Y. County Ct. 1961).

## **Research References & Practice Aids**

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### **Cross References:**

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### **Federal Aspects:**

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### **Jurisprudences:**

4 NY Jur 2d Appellate Review § 718. .

19A NY Jur 2d Conflict of Laws § 5. .

25 NY Jur 2d Counties, Towns, and Municipal Corporations § 285. .

54 NY Jur 2d Enforcement and Execution of Judgments § 410. .

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84 NY Jur 2d Pleading §§ 15.— 18. .

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105 NY Jur 2d Trial § 419. .

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## **Treatises**

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Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4511, Judicial Notice of Law.

1 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 2.01.

3 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 48.11.

### **Matthew Bender's New York CPLR Manual:**

CPLR Manual § 19.09. Particular pleading requirements in certain actions.

### **Matthew Bender's New York AnswerGuides:**

LexisNexis AnswerGuide New York Civil Litigation § 10.08. Admitting Record Under Exceptions to Admission Requirements.

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### **Warren's Weed New York Real Property:**

Warren's Weed: New York Real Property § 50.05.

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1 Bender's New York Evidence § 115.03. Authentication of Public and Official Documents.

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**Annotations:**

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 throughfares 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.

Federal or state law as governing federal court's authority, in diversity action after *Erie R. Co. v. Thompkins*, to take judicial notice of law of sister state or foreign country. 7 ALR Fed 921.

Propriety of taking judicial notice of geographic facts for purposes of proof of venue in federal criminal prosecution. 15 ALR Fed 715.

Effect of Rule 201(g) of the Federal Rules of Evidence, providing for instruction in criminal case that jury need not accept as conclusive fact judicially noticed, on propriety of taking judicial notice on appeal under Rule 201(f). 49 ALR Fed 911.

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**Texts:**

4 Frumer & Biskind, Bender's New York Evidence—CPLR §§ 9.01., 9.12., 9.15., 9.16.; 5 Frumer & Biskind, Bender's New York Evidence—CPLR §§ 20.02., 23.01.

2 New York Trial Guide (Matthew Bender) § 20.14.

**Hierarchy Notes:**

NY CLS CPLR, Art. 45

**Forms**

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**Forms**

**Findings of Fact as to Foreign Law**

Findings of Fact

[State separately and number, as \_\_\_\_\_]

No. \_\_\_\_\_. Under the law of \_\_\_\_\_, statutes or charters of \_\_\_\_\_ companies must be strictly construed.

No. \_\_\_\_\_. Under the law of \_\_\_\_\_, the acts of an overholding Board of Administration or Directors are void.

No. \_\_\_\_\_. There is no provision in the statutory law of \_\_\_\_\_ prohibiting meeting of directors of a \_\_\_\_\_ corporation outside the territory of \_\_\_\_\_ and no decision of the \_\_\_\_\_ courts holding such meetings invalid.

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