

A defendant is charged with robbing a bank. The prosecutor has supplied the court with information from accurate sources establishing that the bank is a federally insured institution and that this fact is not subject to reasonable dispute. The prosecutor asks the court to take judicial notice of this fact. The defendant objects.

How should the court proceed?

- A. The court must take judicial notice and instruct the jury that it is required to accept the judicially noticed fact as conclusive.
- B. The court must take judicial notice and instruct the jury that it may, but is not required to, accept the judicially noticed fact as conclusive.
- C. The court may refuse to take judicial notice, because judicial notice may not be taken of essential facts in a criminal case.
- D. The court must refuse to take judicial notice, because whether a bank is federally insured would not be generally known within the court's jurisdiction.

Explanation:

Judicial notice of adjudicative facts

(FRE 201)

Case type	Taking notice	Instructing jury
Civil	Court: <i>may</i> take notice on its own	Jury <i>must</i> accept noticed fact as conclusive
Criminal	<i>must</i> take notice if party requests & supplies necessary information	Jury <i>may</i> accept noticed fact as conclusive

FRE = Federal Rule of Evidence

Judicial notice is a court's recognition of a fact as true without formal proof. Under Federal Rule of Evidence 201, the court may take judicial notice of *any* **adjudicative fact** that is **not subject to reasonable dispute** because it:

is generally known within the court's jurisdiction—ie, common knowledge in the community where the court is sitting *or*

can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned (**Choice D**).

Judicial notice is **mandatory if a party requests** it and supplies the court with the necessary information to indicate that the fact is not subject to reasonable dispute. But in a **criminal case**, the jury *cannot* be instructed to accept a noticed fact as conclusive since this would impermissibly limit the defendant's [right to a jury trial](#). Instead, the **jury must be instructed** that it **may or may not accept** the noticed fact as conclusive.*

Here, the prosecutor requested judicial notice of the fact that the bank is a federally insured institution. The court must notice this fact since the prosecutor supplied the court with information from accurate sources establishing that the fact is not subject to reasonable dispute. And since this is a criminal case, the court must instruct the jury that it may—but is not required to—accept the judicially noticed fact as conclusive (**Choice A**).

*Since a jury in a criminal case has the ability to pass upon judicially noticed facts, a court may not take judicial notice against a criminal defendant for the first time on appeal. However, a court may take judicial notice at any time, including on appeal, in all other proceedings.

(Choice C) A court *may* take judicial notice of essential facts (and other adjudicative facts) in a criminal case so long as those facts are not subject to reasonable dispute.

Educational objective:

A court must take judicial notice of a fact if a party requests it and supplies the court with the necessary information to show that the fact is not subject to reasonable dispute. And in a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

References

Fed. R. Evid. 201 (judicial notice).

Copyright © 2013 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.