

A defendant is on trial for the burglary of a small-town jewelry store. The prosecution called a witness to testify that, on the night of the burglary, the witness was leaving a diner located behind the jewelry store and saw a man who she is certain was the defendant exit the jewelry store carrying a knapsack. On cross-examination, the defendant's attorney confronted the witness about the lack of artificial lighting behind the jewelry store and in its immediate vicinity. The defendant's attorney asked the witness how she could be certain that the person she saw was the defendant. The witness responded that the moon was full and provided enough light for her to see the defendant clearly.

The defendant's attorney provided the court with data from the U.S. Naval Observatory stating that, on the night of the burglary, there was a new moon, which is not illuminated and therefore provides no light. The attorney then requested that the court take judicial notice of this fact. The prosecutor has objected to the defense attorney's request.

How should the court rule on the prosecutor's objection?

- A. Overrule the objection.
- B. Sustain the objection, because judicial notice is not an appropriate method to establish the phases of the moon.
- C. Sustain the objection, because the data is hearsay.
- D. Sustain the objection, because the moon's phase on the night in question is irrelevant.

## Explanation:

Any evidence used to impeach a witness on a material issue is considered relevant. Here, evidence about the new moon discredits the witness's assertion that there was a full moon on the night of the burglary. This concerns a material issue because whether there was enough light to identify the defendant is of consequence in determining the outcome of this case. Therefore, the moon's phase is relevant **(Choice D)**.

Relevant evidence can be introduced through any method allowable under the evidentiary rules. For example, Federal Rule of Evidence 201 allows the court to take judicial notice of any **adjudicative fact** that is **not subject to reasonable dispute** because it:

is generally known or common knowledge within the community where the court is sitting  
*or*

can be **accurately and readily determined** from sources whose **accuracy cannot** reasonably **be questioned** (eg, data from the U.S. Naval Observatory).

When, as here, a **party requests** that the court take judicial notice of such a fact and **supplies the necessary information** to satisfy the above criteria, the **court must grant** that request. Therefore, the court should overrule the prosecutor's objection and take judicial notice of the new moon **(Choice B)**. And since this is a criminal jury trial, the court should then instruct the jury that it *may* accept the noticed fact as conclusive.

**(Choice C)** Hearsay is an out-of-court statement that is inadmissible—absent an **exclusion or exception**—when offered to prove the truth of the matter asserted therein. Here, the moon data was not offered into evidence; the defendant's attorney merely asked the court to judicially notice the data. And even if the data had been offered for its truth, it would likely be admissible under the hearsay exception for **business records**.

## Educational objective:

A court can take judicial notice of any adjudicative fact that is not subject to reasonable dispute because it (1) is generally known within the court's jurisdiction or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

## References

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

## Judicial notice of adjudicative fact

