

A defendant was charged in federal court with selling a controlled substance (heroin) in interstate commerce. At trial, the prosecutor introduced evidence that the defendant had obtained the substance from a supplier in Kansas City and had delivered it in Chicago. The defendant denied that the substance in question was heroin, but he introduced no contrary evidence on the issue of transportation.

Which of the following instructions regarding judicial notice may the judge legitimately give the jury?

- A. "I instruct you that there is a presumption that the substance was sold in an interstate transaction, but the burden of persuasion on that issue is still on the government."
- B. "If you find that the defendant obtained the substance in Kansas City and delivered it to Chicago, I instruct you to find that the substance was sold in an interstate transaction."
- C. "If you find that the defendant obtained the substance in Kansas City and delivered it to Chicago, then the burden of persuasion is on the defendant to establish that the transaction was not interstate."
- D. "If you find that the defendant obtained the substance in Kansas City and delivered it to Chicago, then you may, but you are not required to, find that the transaction was interstate in nature."

Explanation:

Judicial notice allows a court to **recognize** an **adjudicative fact** about the case or parties **as true**—without a formal presentation of evidence—if that fact is not subject to reasonable dispute. In **civil** cases, the court must **instruct the jury to accept** the noticed fact as conclusive. But in **criminal** cases, the court must instruct the jury that it *may or may not accept* the noticed fact as conclusive.

Here, the court could take judicial notice of the *undisputed* fact that the defendant transported a substance from Kansas City to Chicago. But since this is a criminal case, the judge cannot instruct the jury to presume or find that the substance was sold in an interstate transaction **(Choices A & B)**. The judge can merely bring the judicially noticed fact to the jury's attention and allow it to freely reject or accept that fact.

(Choice C) A judicially noticed fact in a criminal case cannot shift the constitutionally mandated burden of persuasion requiring the *government* to prove all elements of a crime beyond a reasonable doubt.

Educational objective:

A jury must accept a judicially noticed fact as conclusive in civil cases. But the jury is *not* required to do so in criminal cases.

References

Fed. R. Evid. 201(f) (jury instruction for judicial notice).

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Jury instruction on judicially noticed fact



Civil trial

You ***must*** accept judicially noticed fact as conclusive.

Criminal trial

You ***may***, but are not required to, accept judicially noticed fact as conclusive.

