

In a federal civil trial, the plaintiff wishes to establish that the defendant had been convicted of fraud in a state court, a fact that the defendant denies.

Which mode of proof of the conviction is LEAST likely to be permitted?

- A. A certified copy of the judgment of conviction, offered as a self-authenticating document.
- B. Judicial notice of the conviction, based on the court's telephone call to the clerk of the state court, whom the judge knows personally.
- C. Testimony by a witness to whom the defendant made an oral admission that he had been convicted.
- D. Testimony of the plaintiff, who was present at the time of the sentence.

Explanation:

Facts not subject to reasonable dispute

(FRE 201)

Type of fact	Definition	Examples
Notorious	Fact is generally known in community where court is sitting	Local custom Town holiday Regional terminology
Manifest	Fact is accurately & readily determinable from authoritative source	Laws & historic facts Weights & measures Geographic data

FRE = Federal Rule of Evidence

Judicial notice allows a court—on its own or upon a party's request—to **recognize a fact as true** without a formal presentation of evidence. The court may take judicial notice of any **adjudicative fact** about the case or parties that is **not subject to reasonable dispute** because that fact is:

notorious – generally known within the community where the court is sitting (ie, the court's territorial jurisdiction) *or*

manifest – accurately and readily determinable from sources whose accuracy cannot reasonably be questioned (ie, well-established sources).

Unlike a local event or holiday, the defendant's conviction in state court is likely not generally known in the federal court's territorial jurisdiction. And unlike an almanac, a clerk whom the judge knows personally is not a well-established source that can be used to verify the accuracy of the conviction. Therefore, judicial notice is *unlikely* to be permitted as a mode of proof.

(Choice A) A certified copy of an official record (eg, the judgment of conviction) is self-authenticating. That means that no extrinsic evidence of authenticity—eg, testimony that the document is what it appears to be—is needed to admit the record into evidence. Therefore, this mode of proof would likely be permitted.

(Choice C) Statements made by a party-opponent (eg, the defendant) are not considered hearsay, so they are generally admissible. As a result, the witness can likely testify about the defendant's oral admission.

(Choice D) Lay (ie, nonexpert) witnesses can generally testify to any matter of which they have personal knowledge. This includes facts that the witness *perceived firsthand* or opinions based on the witness's personal observation or experience. Therefore, testimony on the plaintiff's personal observations is likely permissible.

Educational objective:

Judicial notice can be taken of any adjudicative fact about the case or parties that (1) is generally known within the community where the court is sitting or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

References

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

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