

In contract litigation between a plaintiff and a defendant, a fact of consequence to the determination of the action is whether the plaintiff provided the defendant with a required notice at the defendant's branch office "in the state capital." The plaintiff introduced evidence that he gave notice at the defendant's office in City X. Although City X is the state's capital, the plaintiff failed to offer proof of that fact.

Which of the following statements is most clearly correct with respect to possible judicial notice of the fact that City X is the state's capital?

- A. If the court takes judicial notice, it should instruct the jury that it may, but is not required to, accept as conclusive the fact that City X is the capital.
- B. If the court takes judicial notice, the burden of persuasion on the issue of whether City X is the capital shifts to the defendant.
- C. The court may take judicial notice even though the plaintiff does not request it.
- D. The court may take judicial notice only if the plaintiff provides the court with an authenticated copy of the statute that designates City X as the capital.

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 the **court's acceptance** of a fact as true without the need for a party to prove that fact. Under Federal Rule of Evidence 201, the court may take judicial notice of *any adjudicative fact* that is **not subject to reasonable dispute**—eg, the fact that City X is the state's capital. The court:

may take judicial notice sua sponte* (ie, **on its own initiative**) *or*

must take judicial notice if a party requests it and supplies the court with the necessary information to indicate that the fact is not subject to reasonable dispute **(Choice D)**.

Therefore, the court may take judicial notice of the fact that City X is the state's capital even though the plaintiff does not request it. And since this contract litigation is a **civil case**, that judicial notice is **binding on the jury**. This means that the jury should be instructed that it **must accept the noticed fact** as conclusive **(Choice A)**.

*The court may *not* take judicial notice of a fact based solely on the judge's own personal knowledge. Instead, the fact must be generally known within the community (ie, notorious) OR capable of being accurately and readily determined (ie, manifest).

(Choice B) Once judicial notice is taken in this civil case, the issue of whether City X is the capital is decided and the jury cannot weigh the evidence or reach its own conclusion on this issue. As a result, there is no burden of persuasion (ie, standard of proof) on this issue.

Educational objective:

A court can take judicial notice of an adjudicative fact that is not subject to reasonable dispute (1) on its own initiative or (2) at a party's request. And in a civil case, a noticed fact is binding on the jury.

References

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

Copyright © 1997 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.