

A defendant was indicted on two counts of grand larceny, which occurred near a U.S. canal located between two foreign countries. At the bench trial in federal district court, the prosecution provided direct evidence of the locations of the thefts but provided no evidence that those locations were within the U.S. canal. The defendant was found guilty of grand larceny.

On appeal, the defendant has argued that the prosecution failed to establish that the trial court had jurisdiction because there was no evidence that the charged offenses were committed within the boundaries of the United States. The prosecution has requested that the appellate court take judicial notice of the boundaries of the canal zone. The appellate court has been furnished with official government maps of the boundaries between the U.S. canal and the foreign countries that identify the general area where the offenses occurred.

Is the prosecution's request for judicial notice proper?

- A. No, because a court cannot take judicial notice of jurisdictional boundaries that are determinative of its subject-matter jurisdiction.
- B. No, because taking judicial notice of jurisdictional boundaries for the first time on appeal violates the defendant's right to confrontation.
- C. Yes, because a party is entitled to an opportunity to be heard on the propriety of taking judicial notice and tenor of the matter to be noticed.
- D. Yes, because judicial notice may be taken at any stage of this proceeding.

Explanation:

A court may take judicial notice of any **adjudicative fact** that is **not subject to reasonable dispute** because it:

is generally known within the community where the court is sitting *or* can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Judicial notice can be **taken at any stage** of a proceeding—even on appeal, so long as it is **not unfair to the opposing party AND does not disrupt the fact finder's authority**. For example, a court cannot take judicial notice of a fact against a criminal defendant for the first time on appeal from a criminal *jury* trial because a criminal jury need not accept a noticed fact as conclusive. But this issue does not arise in bench trials or civil jury trials, where a noticed fact generally must be accepted as conclusive.

Here, the prosecution requests that the appellate court judicially notice the canal-zone boundaries to establish the trial court's jurisdiction (adjudicative fact). The locations of the thefts were determined at trial, so whether those locations fall within U.S. territory can be accurately and readily determined from official maps (no reasonable dispute). And since this is an appeal from a *bench* trial, judicial notice would not interfere with the trial judge's fact-finding authority or be unfair to the defendant. Therefore, the request is proper **(Choice A)**.

(Choice B) Appellate courts cannot take judicial notice if doing so would unfairly limit a criminal defendant's right to confront witnesses. This is not an issue here since the locations of the thefts were determined at trial and are not in dispute on appeal.

(Choice C) The judge must give either party, upon request, an opportunity to be heard on the propriety (ie, appropriateness) of taking judicial notice and the tenor (ie, meaning) of the fact to be noticed. But there is no indication that the parties would not receive this opportunity.

Educational objective:

Judicial notice can be taken at any stage of a proceeding—including on appeal, so long as it is not unfair to the opposing party and does not disrupt the fact finder's authority.

References

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

29 Am. Jur. 2d Evidence § 45 (2020) (discussing judicial notice taken on appeal).

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.

