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Missouri Judicial Notice

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MISSOURI JUDICIAL NOTICE

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I. INTRODUCTION

A. *Purpose and Effect of Judicial Notice*

In its most commonly used sense, judicial notice refers to situations where the court is justified in declaring the truth of a proposition without requiring evidence.[1] Judicial notice may save time by eliminating the need to introduce evidence.[2] If only matters that are demonstrably indisputable are noticed, the chances of factual error are reduced.[3] Although some cases

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1. 9 J. WIGMORE, EVIDENCE § 2565, at 693-94 (J. Chadborn rev. ed. 1981). *See* Scheufler v. Continental Life Ins. Co., 350 Mo. 886, 895, 169 S.W. 359, 365 (1943); *see generally* MO. BAR C.L.E., SOURCES OF PROOF § 7.1 (1977); Thompson, *Evidence,* 28 MO. L. REV. 539, 544-45 (1963); Comment, *Judicial Notice in Missouri,* 24 MO. L. REV. 75 (1959). Administrative bodies also use judicial notice. *See, e.g.,* Stegeman v. St. Francis Xavier Parish, 611 S.W.2d 204, 209 (Mo. 1981) (en banc) (Labor and Industrial Relations Commission may apply judicial notice when proper under rules of evidence); *see also* MO. REV. STAT. § 536.070 (1978) (agencies shall take official notice of all matters that the courts take judicial notice of, including technical or scientific facts, provided the parties are given a reasonable opportunity to respond).

2. Note, *Judicial Notice: Rule 201 of the Federal Rules of Evidence,* 28 U. FLA. L. REV. 723, 724 (1976). *See also Judicial Notice—Disputability and Appellate Practice Regarding Judicial Notice of Stopping Distances,* 38 MO. L. REV. 678, 680 (1973).

3. U. FLA. L. REV., *supra* note 2, at 724.

refer to judicial notice as an instrument of judicial reasoning,[4] Missouri courts traditionally have viewed the doctrine as a rule of evidence[5] which presumes as true the facts noticed[6] and eliminates the necessity of formal proof.[7] Ordinarily, facts noticed must be offered as evidence[8] and become part of the record.[9] They are treated the same as other factual evidence in the case,[10] and juries may find these facts without further proof.[11]

The conclusiveness of proof by judicial notice depends upon the certainty of the source.[12] If a fact can be disputed,[13] judicial notice is merely

4. *See, e.g.,* Endicott v. St. Regis Inv. Co., 443 S.W.2d 122, 126 (Mo. 1969) (judicial notice is either a rule of evidence or an instrument of judicial reasoning).

5. *See* Randall v. St. Albans Farms, Inc., 345 S.W.2d 220, 223 (Mo. 1961); *see also* Ralph D'Oench Co. v. St. Louis County Cleaning & Dyeing Co., 358 Mo. 1072, 1076, 218 S.W.2d 609, 612 (1949) (judicially noticed facts are evidence and thus not properly considered in judgment on pleadings).

6. *See* Timson v. Manufacturers' Coal & Coke Co., 220 Mo. 580, 596-97, 119 S.W. 565, 569 (1909) (analogized judicially noticed facts to presumptions).

7. *See* Rossomanno v. LaClede Cab Co., 328 S.W.2d 677, 683 (Mo. 1959) (en banc); Schuefler v. Continental Life Ins. Co., 350 Mo. 886, 895, 169 S.W.2d 359, 365 (1943); Newson v. City of Kan. City, 606 S.W.2d 487, 490 (Mo. Ct. App. 1980); Mince v. Mince, 481 S.W.2d 610, 614 (Mo. Ct. App. 1972).

8. Randall v. St. Albans Farms, Inc., 345 S.W.2d 220, 223 (Mo. 1961). *See* Hume v. Wright, 274 S.W. 741, 744 (Mo. 1925) (error to base judgment on facts noticed but not put in evidence); *see also* Knorp v. Thompson, 352 Mo. 44, 47, 175 S.W.2d 889, 893 (1943). *But see* Stimage v. Union Elec. Co., 465 S.W.2d 23, 27 (Mo. Ct. App. 1971) (facts judicially noticed need not be introduced in evidence and jury may consider them without independent proof).

9. *See* Randall v. St. Albans Farms, Inc., 345 S.W.2d 220, 223 (Mo. 1961); Zickefoose v. Thompson, 347 Mo. 579, 594, 148 S.W.2d 784, 792 (1941).

10. Like any other fact in evidence, facts judicially noticed may be rebutted. Jackson v. Cherokee Drug Co., 434 S.W.2d 257, 264 (Mo. Ct. App. 1968). *See* Ralph D'Oench Co. v. St. Louis County Cleaning & Dyeing Co., 358 Mo. 1072, 1077, 218 S.W.2d 609, 612 (1949).

11. *See* Morrison v. Thomas, 481 S.W.2d 605, 608 (Mo. Ct. App. 1972) (judicial notice does not prevent submitting noticed issue to the jury); *see also* Kansas City v. Dugan, 524 S.W.2d 194, 197 (Mo. Ct. App. 1975) (discretion not abused by failing to notice article when court neither saw nor was asked to notice); MO. BAR C.L.E., *supra* note 1, § 7.1.

12. Newson v. City of Kan. City, 606 S.W.2d 487, 490 (Mo. Ct. App. 1980).

13. Missouri courts consistently suggest that not all judicially noticed facts are disputable. *See* Scheufler v. Continental Life Ins. Co., 350 Mo. 886, 896, 169 S.W.2d 359, 365 (1943) ("many of the things which are judicially noticed . . . cannot well be supposed to admit of question"); *see also* Rossomanno v. LaClede Cab Co., 328 S.W.2d 677, 683 n.1 (Mo. 1959) (en banc); Timson v. Manufacturers' Coal & Coke Co., 220 Mo. 580, 597, 119 S.W. 565, 569 (1909); Newson v. City of Kan. City, 606 S.W.2d 487, 490 (Mo. Ct. App. 1980). Of course, reasonable men may disagree over whether a given proposition is indisputable. Morgan, *Judicial Notice*, 57 HARV. L. REV. 268, 274-75 (1944).

prima facie recognition of the fact,[14] and the party opposing the notice can introduce evidence in rebuttal.[15] Thus, judicial notice does not infringe the right to trial by jury.[16]

B. *Scope of Judicial Notice*

Judicial notice has been applied to three distinct situations. First, it often refers to the process by which courts inform themselves of applicable law. This process, while best characterized as judicial knowledge obtained by legal research, traditionally has been viewed as a form of judicial notice.[17] Second, judicial notice often describes the recognition of specific facts not proved by the litigant which relate to the parties' activities, property, businesses, or which are otherwise necessary to intelligently resolve the controversy.[18] Facts in this category are those that normally go to the jury and to which the law is applied in the process of adjudication.[19] They are called adjudicative facts. Third, judicial notice has been applied to the process by which courts take social, political, and economic realities into account. Facts in this category, "which have relevance to legal reasoning and the lawmaking process,"[20] are called legislative facts and often are more opinion than indisputable fact.

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14. English v. Old Am. Ins. Co., 426 S.W.2d 33, 41 (Mo. 1968); Timson v. Manufacturers' Coal & Coke Co., 220 Mo. 580, 597, 119 S.W. 565, 569 (1909); State v. Burley, 523 S.W.2d 575, 579 (Mo. Ct. App. 1975).

15. Morrison v. Thomas, 481 S.W.2d 605, 607 (Mo. Ct. App. 1971). *See, e.g,* State v. Burley, 523 S.W.2d 575, 579 (Mo. Ct. App. 1975); *see also* English v. Old Am. Ins. Co., 426 S.W.2d 33, 41 (Mo. 1968); Jackson v. Cherokee Drug Co., 434 S.W.2d 257, 263 (Mo. Ct. App. 1968). The lack of an opportunity to refute judicially noticed facts has been the basis of reversals, *e.g.,* Knorp v. Thompson, 352 Mo. 44, 47, 175 S.W.2d 889, 894 (1943), and appellate refusals to notice facts not brought to the trial court's attention. *E.g.,* Morrison v. Thomas, 481 S.W.2d 605, 607 (Mo. Ct. App. 1972).

16. *See* Comment, *The Presently Expanding Concept of Judicial Notice,* 13 VILL. L. REV. 528, 542 (1968). The problem is more serious in jurisdictions where judicially noticed facts are indisputable. *Id.* Although the question rarely arises, judicial notice of facts adverse to a criminal defendant arguably violates the right to confront witnesses. *See* United States v. Alvarado, 519 F.2d 1133, 1135 (5th Cir. 1975), *cert. denied,* 424 U.S. 911 (1976); *see also* State v. Berry, 609 S.W.2d 948, 955 (Mo. 1980); *cf.* Knorp v. Thompson, 352 Mo. 44, 52, 175 S.W.2d 889, 894 (1943) (judicial notice on appeal deprives parties of right to confront and to cross-examine witnesses). *But cf.* State v. Brooks, 551 S.W.2d 634, 652-53 (Mo. Ct. App. 1977) (reading transcript did not deny right of confrontation), *cert. denied,* 434 U.S. 1017 (1978).

17. FED. R. EVID. 201 advisory committee note.

18. *See id.*

19. *Id.*

20. *Id.*

II. JUDICIAL NOTICE OF ADJUDICATIVE FACTS

A. *Generally*

The Federal Rules of Evidence provide that a "judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."[21] Many Missouri cases refer to similar criteria and emphasize the notoriety of the fact in question.[22] In Missouri, facts judicially noticed are disputable;[23] unlike federal law, indisputability is not an essential prerequisite to notice of adjudicative facts.[24] The majority of Missouri cases that notice adjudicative facts, however, do not specifically state whether notice is premised on general knowledge or ready and accurate determination.

Missouri courts have indicated a willingness to take judicial notice (judicial knowledge and common knowledge[25] are encompased within the term judicial notice[26]) of facts that are commonly known to the general public.[27] Universal knowledge is not required and probably not possible. Facts known only to the judge or to a small group of people, however, are not appropriate for judicial notice.[28]

Notice also may be taken of facts that are beyond the actual knowledge

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21. FED. R. EVID. 201(b).

22. *See, e.g.,* English v. Old Am. Ins. Co., 426 S.W.2d 33, 40-41 (Mo. 1968).

23. Timson v. Manufacturers' Coal & Coke Co., 220 Mo. 580, 598, 119 S.W. 565, 569 (1909) (en banc).

24. Scheufler v. Continental Life Ins. Co., 350 Mo. 886, 896, 169 S.W.2d 359, 365 (1943).

25. Borden Co. v. Thomason, 353 S.W.2d 735, 766 (Mo. 1962) (en banc).

26. *See* Bone v. General Motors Corp., 322 S.W.2d 916, 924 (Mo. 1959).

27. *See* ABC Liquidators v. Kansas City, 322 S.W.2d 876, 884 (Mo. 1959); State v. Burley, 523 S.W.2d 575, 579 (Mo. Ct. App. 1975). "The basic operative condition of judicial notice is the notoriety of the fact to be noticed. It must be part of the common knowledge of every person of ordinary understanding and intelligence; only then does it become proper to assume the existence of that fact without proof." Endicott v. St. Regis Inv. Co., 443 S.W.2d 122, 126 (Mo. 1969) (quoting English v. Old Am. Ins. Co., 426 S.W.2d 33, 40-41 (Mo. 1968)). *See also* Elder v. Delcour, 364 Mo. 835, 838, 269 S.W.2d 17, 19 (1954) (en banc). *But cf.* Rockenstein v. Rogers, 326 Mo. 468, 31 S.W.2d 792 (1930) (notice premised on "almost common knowledge").

28. Judicial notice must be declined if there is doubt as to the notoriety of the fact. Endicott v. St. Regis Inv. Co., 443 S.W.2d 122, 126 (Mo. 1969). *See also* State v. Dauit, 343 Mo. 1151, 1159, 125 S.W.2d 47, 52 (1939) (refusal to take notice of attorney's professional reputation). In "its broad sense, judicial notice operates not only as to things commonly known, but also to things courts are deemed to know by virtue of their office." Mince v. Mince, 481 S.W.2d 610, 614 (Mo. Ct. App. 1972). *See, e.g.,* Canada v. State, 505 S.W.2d 42, 44 (Mo. 1974) (court relied upon its personal knowledge of counsel's experience).

of the judge if they are ascertainable by reference to reliable authoritative sources.[29] When a court takes judicial notice of facts not actually known,[30] the judge may determine the information as he or she pleases.[31]

B. *Mechanics of Judicially Noticing Adjudicative Facts*

The Federal Rules of Evidence provide that a court may take judicial notice on its own motion and shall take judicial notice if requested by a party supplying the necessary information.[32] Some Missouri cases state that counsel must request that the court take judicial notice[33] and that the

29. Felden v. Horton & Coleman, 234 Mo. App. 421, 424, 135 S.W.2d 1115, 1117 (1939). *See also* Cupples Hesse Corp. v. State Tax Comm'n, 329 S.W.2d 696, 700-01 (Mo. 1959) (courts cannot create technical knowledge in the first instance by reference to publications, but refreshing recollection or verifying matter by reference to dictionaries or encyclopedias is permissible); Langton v. Brown, 591 S.W.2d 84, 87-88 (Mo. Ct. App. 1979) (whether judicial notice should be taken of medical dictionary definition). *Compare* City of St. Louis v. Niehaus, 236 Mo. 8, 17, 139 S.W. 450, 452 (1911) (notice may be taken of facts generally known and duly authenticated in repositories of fact open to all) *with* Timson v. Manufacturers' Coal & Coke Co., 220 Mo. 580, 596, 119 S.W. 565, 569 (1909) (courts may not notice "facts merely because they may be ascertained by reference to dictionaries, encyclopedias, or other publications, nor of facts which the court cannot know without resort to expert testimony or other proof").

30. Matters of which the court is ignorant must be called to its attention by the litigant before they may be noticed. Christy v. Wabash Ry., 195 Mo. App. 232, 241-42, 191 S.W. 241, 245 (1916), *cert. denied,* 246 U.S. 656 (1918). *See* Comment, *supra* note 1, at 77.

31. Judges and jurors must rely on knowledge acquired outside the judicial process. A case cannot be constructed from scratch, and no step toward a reasoned conclusion "can be taken without assuming something which has not been proved." J. THAYER, A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW 279 (1898). *See also* FED. R. EVID. 201 advisory committee note. Judge and jury possess the basic information known to the public at large, and they are encouraged to rely on experience and common sense in drawing conclusions. *See* Bone v. General Motors Corp., 322 S.W.2d 916, 924 (Mo. 1959); Miller v. Sabinske, 322 S.W.2d 941, 947 (Mo. Ct. App. 1959). Difficulty arises when the trier of fact has knowledge acquired only as an individual observer outside of court. 9 J. WIGMORE, *supra* note 1, § 2569. Historically, judges could not use personal knowledge. *See* Scheufler v. Continental Life Ins. Co., 350 Mo. 886, 895, 169 S.W.2d 359, 365 (1943); Note, *Judicial Notice and Personal Knowledge,* 42 MOD. L. REV. 22 (1979). Jurors, however, freely used their private knowledge. J. THAYER, *supra*, at 277. Today, neither judges or jurors are allowed to use knowledge obtained outside evidentiary channels. The extrajudicial knowledge of a judge does not obviate the necessity of proving facts which cannot be judicially noticed. H— v. D—, 373 S.W.2d 646, 655 (Mo. Ct. App. 1963). A court will not, however, notice facts directly contrary to its personal knowledge. Harris v. Lane, 379 S.W.2d 635, 640 (Mo. Ct. App. 1964).

32. FED. R. EVID. 201(c), (d).

33. *See, e.g.,* Hogan v. Buerger, 647 S.W.2d 211, 215 (Mo. Ct. App. 1983); State

facts must be offered into evidence.[34] The fact in question must be relevant,[35] but relevance does not bind a court to take judicial notice; the decision rests in the discretion of the court.[36]

Whether the court takes notice depends on the nature of the subject, the issue involved, and the justice of the case.[37] Courts ordinarily will not notice the facts and records in one proceeding in deciding a different proceeding because cases should not be decided on the basis of evidence which parties have no opportunity to refute, impeach, or explain.[38] Conversely, it has been suggested that a court is required to take judicial notice of its own records,[39] of mortality tables,[40] and of current historical, geographical, and scientific facts[41] because such facts are commonly known to all mankind.[42] Some cases state that courts must notice such facts on their own motion; a request by a litigant is not required.[43]

The federal rules provide that a party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and to the tenor of the matter noticed.[44] Similarly, some Missouri cases suggest that the proper procedure is to call the matters to be noticed to the attention of the court during trial; this gives opposing counsel an opportunity to offer rebuttal evidence.[45] The right to offer rebuttal evidence is distinct from the opportunity to complain of the propriety of taking judicial notice. Since Missouri law affords only prima facie recognition to adjudicative facts

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v. Cullen, 646 S.W.2d 850, 855 (Mo. Ct. App. 1981); Kansas City v. Dugan, 524 S.W.2d 194, 197 (Mo. Ct. App. 1975).

34. *See, e.g.,* Randall v. St. Albans Farms, Inc., 345 S.W.2d 220, 223 (Mo. 1961).

35. Anderson v. Knobbe, 504 S.W.2d 99, 102 (Mo. 1974).

36. *See* State v. Kelly, 539 S.W.2d 106, 110 (Mo. 1976) (en banc); City of St. Louis v. Niehaus, 236 Mo. 8, 16-17, 139 S.W. 450, 452 (1911).

37. State v. Kelly, 539 S.W.2d 106, 110 (Mo. 1976) (en banc); State *ex rel.* F.T. O'Dell Constr. Co. v. Hostetter, 340 Mo. 1155, 1163, 104 S.W.2d 671, 675 (1937); City of St. Louis v. Niehaus, 236 Mo. 8, 17, 139 S.W. 450, 452 (1911); *see generally* MO. BAR C.L.E., *supra* note 1, §§ 7.3-7.5.

38. Knorp v. Thompson, 352 Mo. 44, 47, 175 S.W.2d 889, 891 (1943). *See, e.g.,* Drew v. Littler, 637 S.W.2d 772, 777-78 (Mo. Ct. App. 1982); Mince v. Mince, 481 S.W.2d 610, 614 (Mo. Ct. App. 1972).

39. *See* Hardin v. Hardin, 512 S.W.2d 851, 854 (Mo. Ct. App. 1974). This rule applies whether or not a party suggests notice. *Id.*

40. *See* Jackson v. Cherokee Drug Co., 434 S.W.2d 257, 264 (Mo. Ct. App. 1968).

41. *See* State v. Buckley, 318 Mo. 17, 26, 298 S.W. 777, 781 (1927).

42. Bowman v. Kansas City, 361 Mo. 14, 21, 233 S.W.2d 26, 30 (1950) (en banc).

43. *See, e.g.,* Hardin v. Hardin, 512 S.W.2d 851, 854 (Mo. Ct. App. 1974); Stimage v. Union Elec. Co., 465 S.W.2d 23, 26 (Mo. Ct. App. 1971).

44. FED. R. EVID. 201(e).

45. *See, e.g.,* Knorp v. Thompson, 352 Mo. 44, 47, 175 S.W.2d 889, 894 (1943); Jackson v. Cherokee Drug Co., 434 S.W.2d 257, 264 (Mo. Ct. App. 1968).

judicially noticed,[46] the opposing party has a right to offer rebuttal evidence,[47] and many cases focus on providing this opportunity.

When a trial court takes judicial notice, a chance to be heard on propriety and in rebuttal ordinarily is available. If judicial notice is taken on appeal, however, the party opposing notice may be deprived of both opportunities.[48] Problems are minimal when an appellate court takes judicial notice of facts that a jury might have found from the evidence or of matters within the jurors' experience which they could properly have relied on in reaching a decision.[49] Counsel can be said to have had an opportunity to offer evidence to refute the adversary's evidence or to rebut presumptions or assumptions. When notice is taken of facts which could not have been found from evidence introduced at trial, however, fairness requires that opposing counsel be granted an opportunity to be heard before judicial notice is taken, whether during trial, after closing argument,[50] or on appeal.[51]

Federal Rule of Evidence 201 permits judicial notice at any stage of proceedings[52] and contemplates that judicial notice may be taken at trial or on appeal. Missouri cases are in accord with this rule.[53] Occasionally, however, an appellate court will suggest that notice on appeal is improper. A Missouri court of appeals recently refused to judicially notice a stopping distance when the defendant made no request for notice at trial. The court indicated that taking notice on appeal would deprive the party opposing the request of an opportunity to offer rebuttal evidence. The court emphasized, however, that it was being asked to find that the plaintiff's claim that he was obeying the speed limit was factually impossible because of a judicially cognizable stopping distance.[54] Because it viewed defendant's request as inconsistent with the inherently inconclusive nature of judicial notice in

46. *See* text accompanying note 15 *supra.* Geographic facts noticed to prove venue are ordinarily indisputable, so the problems of noticing them after the close of the evidence are minimized. *See, e.g.,* State v. Bird, 358 Mo. 284, 286, 214 S.W.2d 38, 40 (1948).

47. Morrison v. Thomas, 481 S.W.2d 605, 607 (Mo. Ct. App. 1972).

48. *See, e.g.,* Morrison v. Thomas, 481 S.W.2d 605, 607 (Mo. Ct. App. 1972). There is no current Missouri law regarding notifying the opposing party of the court's intention to judicially notice a matter. "Consequently, the opposing party is not given a reasonable opportunity to present information relevant to the propriety of taking judicial notice of the matter in question." MO. BAR C.L.E., *supra* note 1, § 7.12.

49. Stimage v. Union Elec. Co., 465 S.W.2d 23, 26 (Mo. Ct. App. 1971).

50. *See, e.g.,* Jackson v. Cherokee Drug Co., 434 S.W.2d 257, 264 (Mo. Ct. App. 1968).

51. *See* MO. L. REV., *supra* note 2, at 682.

52. FED. R. EVID. 201(f). *But see* United States v. Jones, 580 F.2d 219, 222-24 (6th Cir. 1978) (notice on appeal violates Rule 201(g)).

53. *See* MO. L. REV., *supra* note 2, at 682-83.

54. Morrison v. Thomas, 481 S.W.2d 605, 607 (Mo. Ct. App. 1972).

Missouri,[55] the decision does not suggest that notice on appeal is inevitably improper; it merely reinforces the Missouri practice that judicially noticed facts are only prima facie evidence.

Federal Rule of Evidence 201 states that "in a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case the court shall instruct the jury that it may accept as conclusive any fact judicially noticed."[56] The Missouri Approved Instructions do not address this problem.[57]

C. *Adjudicative Facts Judicially Noticed*

1. Geography, History, and Statistics

Notice has been taken of a variety of geographical facts,[58] including facts relating to surveying practices,[59] lakes,[60] and rivers.[61] All kinds of locations and distances have been noticed,[62] including the boundaries[63] and locations of counties,[64] the location of places within a particular city,[65] county,[66] or the state,[67] and the locations of highways,[68] airports,[69] cities,[70]

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55. *Id.*

56. FED. R. EVID. 201(g).

57. No instruction may unduly emphasize physical facts. MO. APPROVED INSTR. No. 1.05 (3d ed. 1981). Although the precise meaning of "physical facts" is unclear, the rule has been termed "a jumble of catchily characterized manifestations of the law of judicial notice." Hoffman, *The Probative Force of "Physical Facts" in Missouri Jurisprudence,* 47 MO. L. REV. 369, 383 (1982).

58. State v. Berger, 618 S.W.2d 215, 218 (Mo. Ct. App. 1981). *See also* Reineman v. Larkin, 222 Mo. 156, 170, 121 S.W. 307, 311 (1909) (courts are required to notice geographic facts).

59. *See* Harvedt v. Harpst, 173 S.W.2d 65, 69-70 (Mo. 1943); City of Marshfield v. Haggard, 304 S.W.2d 672, 678 (Mo. Ct. App. 1957); Vanderhoff v. Lawrence, 201 S.W.2d 509, 511 (Mo. Ct. App.), *aff'd,* 208 S.W.2d 569 (1947).

60. *See* Turpin v. Watts, 607 S.W.2d 895, 900 (Mo. Ct. App. 1980).

61. *See* Elder v. Delcour, 364 Mo. 835, 842, 269 S.W.2d 17, 23 (1954) (en banc); Hartvedt v. Harpst, 173 S.W.2d 65, 69 (Mo. 1943).

62. *See* State v. Heissler, 324 S.W.2d 714, 716 (Mo. 1959); State v. Berger, 618 S.W.2d 215, 218 (Mo. Ct. App. 1981); State v. Vincent, 582 S.W.2d 723, 725 (Mo. Ct. App. 1979).

63. *See* Keaton v. Hamilton, 264 Mo. 564, 573, 175 S.W. 967, 969 (1915); State v. Skibiski, 245 Mo. 459, 465, 150 S.W. 1038, 1039 (1912).

64. *See* State v. Berger, 618 S.W.2d 215, 218 (Mo. Ct. App. 1981).

65. *See* Eichelberger v. State, 524 S.W.2d 890, 893 (Mo. Ct. App. 1975); *see also* Opponents, Etc. v. Petitioners For Form., Etc., 564 S.W.2d 552, 554 (Mo. Ct. App. 1978) (municipalities located within townships of the same name).

66. *See* State v. Sockel, 485 S.W.2d 393, 394 (Mo. 1972); State v. Langston, 382 S.W.2d 612, 615 (Mo. 1964); State v. Bird, 358 Mo. 284, 288, 214 S.W.2d 38, 39 (1948); State v. Kenyon, 343 Mo. 1168, 1183, 126 S.W.2d 245, 252 (1938); State v. Skibiski, 245 Mo. 459, 465, 150 S.W. 1038, 1039-40 (1912); Butler County Fin. Co. v. Miller, 240 Mo. App. 954, 958, 225 S.W.2d 135, 137 (1949); *cf.* Boyd-Richardson

and towns.[71] Notice regularly is taken of state highway maps[72] and information that may be gained from them,[73] including the location of highways[74] and communities,[75] distances on roads,[76] and distances between points within[77] and without the state.[78] Although United States highways have been noticed as public highways,[79] Missouri courts generally will not take judicial notice of whether particular streets are within the boundaries of cities.[80]

Judicial notice has been taken of important historical facts,[81] such as

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Co. v. Leachman, 615 S.W.2d 46, 52 (Mo. 1981) (en banc) (characterizing State *ex rel.* McClellan v. Godfrey, 519 S.W.2d 4, 8 (Mo. 1975) (en banc) as taking judicial notice that St. Louis is the only city not located in a county). These facts are usually noticed to establish venue.

67. *See* State v. Valentine, 506 S.W.2d 406, 410 (Mo. 1974); State v. Cobb, 359 Mo. 373, 379, 221 S.W.2d 745, 747 (1949); State v. Pennington, 124 Mo. 388, 392, 27 S.W. 1106, 1107 (1894); State v. Hines, 645 S.W.2d 88, 90 (Mo. Ct. App. 1982).

68. *See* State v. Sockel, 485 S.W.2d 393, 394 (Mo. 1972).

69. *See* State v. Boyd, 492 S.W.2d 787, 792 (Mo.), *cert. denied,* 414 U.S. 1069 (1973).

70. *See* State v. Valentine, 506 S.W.2d 406, 410 (Mo. 1974); State v. Johnson, 461 S.W.2d 724, 725 (Mo. 1971); State v. Twiggs, 553 S.W.2d 69, 70 (Mo. Ct. App. 1977).

71. *See* State v. Chamberlain, 648 S.W.2d 238, 239 (Mo. Ct. App. 1983); Walsh v. Table Rock Asphalt Constr. Co., 522 S.W.2d 116, 118 n.1 (Mo. Ct. App. 1975).

72. *See, e.g.,* State v. Heissler, 324 S.W.2d 714, 716 (Mo. 1959); State v. Vincent, 582 S.W.2d 723, 725 (Mo. Ct. App. 1979).

73. *See* State v. Cooper, 563 S.W.2d 784, 786 n.3 (Mo. Ct. App. 1978).

74. *See* State v. Heissler, 324 S.W.2d 714, 716 (Mo. 1959); State v. Quillan, 570 S.W.2d 767, 769 (Mo. Ct. App. 1978); *see also* State v. Cooper, 563 S.W.2d 784, 786 (Mo. Ct. App. 1978) (most practical highway route).

75. *See In re* Village of Lone Jack, 419 S.W.2d 87, 91 (Mo. 1967) (en banc).

76. *See* State v. Ruckman, 222 S.W.2d 74, 76 (Mo. 1949); State v. Martin, 349 Mo. 639, 643, 162 S.W.2d 847, 849 (1942).

77. State v. Enochs, 339 Mo. 953, 956, 98 S.W.2d 685, 686 (1936). *See, e.g.,* State v. Chamberlain, 648 S.W.2d 238, 239 (Mo. Ct. App. 1983); State v. Dennis, 537 S.W.2d 652, 654 (Mo. Ct. App. 1976); *see also* State v. Berger, 618 S.W.2d 215, 218 (Mo. Ct. App. 1981) (it is not three times further from the town of Buffalo to the Webster County jail than it is from Buffalo to the Polk County jail).

78. *See* Hogan v. Buerger, 647 S.W.2d 211, 215 (Mo. Ct. App. 1983).

79. *See* State v. Hanson, 493 S.W.2d 8, 11 (Mo. Ct. App. 1973); State v. Barker, 490 S.W.2d 263, 270 (Mo. Ct. App. 1973).

80. *See* Bennett v. Kitczhin, 400 S.W.2d 97, 106 (Mo. 1966); Kieffer v. City of Berkeley, 508 S.W.2d 295, 297 (Mo. Ct. App. 1974). *But see* State v. Vincent, 582 S.W.2d 723, 725 (Mo. Ct. App. 1979) (official highway map of Missouri indicated that street was located entirely within the boundaries of St. Louis).

81. *See* Rositzky v. Rositzky, 329 Mo. 662, 679, 46 S.W.2d 591, 599 (1931) (Iowa and Missouri were part of the Louisiana Purchase). Notice of historical facts has been said to be required. State v. Buckley, 318 Mo. 17, 21, 298 S.W. 777, 781 (1927).

the warfare along the Kansas-Missouri border during the Civil War,[82] candidates for public office,[83] and prevailing economic conditions.[84]

Appellate courts have taken judicial notice of mortality tables,[85] units of weight and measure,[86] the time of sunrise[87] and sunset,[88] facts relating to the calendar,[89] including the date on which a particular day of the week falls,[90] and the significance of particular holidays.[91] Notice is taken of facts

82. Doneghy v. Robinson, 210 S.W. 655, 656 (Mo. 1918). *See, e.g.,* Douthitt v. Stinson, 63 Mo. 268, 275 (1876) (Missouri was not a Confederate state); Gross v. Merchants-Produce Bank, 390 S.W.2d 591, 595 (Mo. Ct. App. 1965) (between 1845 and 1873 Kansas City grew to be the metropolis of Jackson County). *But see* State v. Kelly, 539 S.W.2d 106, 110 (Mo. 1976) (en banc) (trial court upheld in refusing to notice information in coin book that no silver dollars were minted in 1819 or 1829).

83. *See* State *ex rel.* Crow v. Bland, 144 Mo. 534, 552, 46 S.W. 440, 443 (1898).

84. *See, e.g.,* State *ex rel.* Crutcher v. Koeln, 332 Mo. 1229, 1231, 61 S.W.2d 750, 756 (1933) (en banc); Title Guaranty Trust Co. v. Sessinghaus, 325 Mo. 420, 422, 28 S.W.2d 1001, 1006 (1930); Covey v. Pierce, 229 Mo. App. 424, 430, 82 S.W.2d 592, 596 (1935) (per curiam). The courts frequently notice matters of current history. *See, e.g.,* State v. Buckley, 318 Mo. 17, 26, 298 S.W. 777, 781 (1927); Turpin v. Watts, 607 S.W.2d 895, 900 (Mo. Ct. App. 1980); Moulder v. Webb, 527 S.W.2d 417, 419 (Mo. Ct. App. 1975). The distinction between current history and other historical facts has not been articulated.

85. *See* Leh v. Dyer, 643 S.W.2d 65, 67 (Mo. Ct. App. 1982); Jackson v. Cherokee Drug Co., 434 S.W.2d 257, 264 (Mo. Ct. App. 1968). Although notice of them is required, these tables may be rebutted. Leh v. Dyer, 643 S.W.2d 65, 67 (Mo. Ct. App. 1982). *See also* Hohlstein v. St. Louis Roofing Co., 328 Mo. 899, 904, 42 S.W.2d 573, 576 (1931).

86. *See* State v. Consiglia, 435 S.W.2d 430, 432 (Mo. Ct. App. 1968); *see also* State v. Nierstheimer, 500 S.W.2d 732, 734 (Mo. Ct. App. 1973); State v. Carwile, 441 S.W.2d 763, 765 (Mo. Ct. App. 1969).

87. *See* State v. Selle, 367 S.W.2d 522, 525 (Mo. 1963); State v. Perkins, 342 Mo. 560, 565, 116 S.W.2d 80, 83 (1938).

88. *See, e.g.,* State v. Powell, 306 S.W.2d 531, 533 (Mo. 1957); State v. Simler, 350 Mo. 646, 650, 167 S.W.2d 376, 379 (1943); State v. Gallimore, 633 S.W.2d 232, 233 (Mo. Ct. App. 1982); Larreu v. Ozark Water Ski Thrill Show, 562 S.W.2d 790, 792 (Mo. Ct. App. 1978); Leek v. Dillard, 304 S.W.2d 60, 64 (Mo. Ct. App. 1957).

89. *See* State v. Schmitz, 46 S.W.2d 539, 540 (Mo. 1932). Calendars and dates are frequently noticed in the context of determining whether limitations have run, particularly to determine whether a day fell on a Saturday, Sunday, or legal holiday. *See* State v. Bubenyak, 331 Mo. 549, 552, 56 S.W.2d 43, 44 (1932); Kuczma v. Droskowski, 243 Mo. 57, 60, 147 S.W. 1000, 1001 (1912); Meriwether v. Overly, 228 Mo. 218, 233-34, 129 S.W. 1, 6 (1910); State v. Barber, 573 S.W.2d 77, 79 (Mo. Ct. App. 1978); Haller v. Shaw, 555 S.W.2d 703, 704 (Mo. Ct. App. 1977); State v. Gantt, 504 S.W.2d 295, 299 (Mo. Ct. App. 1973).

90. *See* State v. Bubenyak, 351 Mo. 549, 552, 56 S.W.2d 43, 44 (1932); State v. Schmitz, 46 S.W.2d 539, 540 (Mo. 1932); Hoffman v. Bagham, 324 Mo. 516, 524-25, 24 S.W.2d 125, 130 (1930); State v. Rainwater, 602 S.W.2d 233, 235 (Mo. Ct.

about population,[92] including the approximate and exact population of counties,[93] cities,[94] and towns.[95]

2. Science, Engineering, and Medicine

Missouri courts also take judicial notice of the laws of nature,[96] the characteristics of domestic animals,[97] and of prevalent weather conditions.[98] Courts have noticed that downdrafts affect aircraft,[99] that wood rots,[100] and that a black surface will reflect less light than a light surface.[101] Judicial knowledge of natural phenomena is limited to those that are com-

App. 1980); Haller v. Shaw, 555 S.W.2d 703, 704 (Mo. Ct. App. 1977); Hagen v. Perryville Bd. of Alderman, 550 S.W.2d 797, 798-99 (Mo. Ct. App. 1977).

91. *See* Edwards v. Business Men's Assurance Co., 350 Mo. 666, 678-79, 168 S.W.2d 82, 88 (1942); City of Gladstone v. Knapp, 458 S.W.2d 885, 888 (Mo. Ct. App. 1970).

92. *See, e.g.,* Hydesburg Common School Dist. v. Renssalaer Common School Dist., 218 S.W.2d 833, 841 (Mo. Ct. App. 1949) (population of rural and urban areas is constantly shifting).

93. *See* State v. Hull, 603 S.W.2d 698, 704 (Mo. 1980); State v. Odor, 369 S.W.2d 173, 179 (Mo. 1963), *cert. denied,* 375 U.S. 993 (1964); State v. Wilcox, 44 S.W.2d 85, 86-87 (Mo. 1931); State v. Hancock, 320 Mo. 254, 256, 75 S.W.2d 275, 276 (1928); State v. Adams, 316 Mo. 157, 159, 289 S.W. 948, 952 (1926); State v. Logan, 268 Mo. 169, 175, 186 S.W. 979, 980 (1916).

94. *See, e.g.,* State *ex rel.* McClellan v. Godfrey, 519 S.W.2d 4, 8 (Mo. 1975) (en banc); Newdiger v. Kansas City, 342 Mo. 252, 264, 114 S.W.2d 1047, 1053 (1937); State v. Lloyd, 320 Mo. 236, 244, 7 S.W.2d 344, 346 (1926); State v. Page, 107 Mo. App. 213, 215-16, 80 S.W. 912, 913 (1904).

95. *See* State v. McBrien, 205 Mo. 594, 609, 178 S.W. 489, 493 (1915).

96. *See, e.g.,* Valley Spring Hog Ranch Co. v. Plagmann, 282 Mo. 1, 19, 220 S.W. 1, 3 (1920) (en banc) (house flies spread germs); La Plant v. DuPont, 346 S.W.2d 231, 237 (Mo. Ct. App. 1961) (nitrates form when weeds die).

97. *See* Lloyd v. Alton Ry., 348 Mo. 1222, 1230, 159 S.W.2d 267, 272 (1942); Mitchell v. Newson, 360 S.W.2d 247, 250 (Mo. Ct. App. 1962); *see also* Brune v. DeBenedetto, 261 S.W. 930, 933 (Mo. Ct. App. 1924); Roy v. Noell Kan. City Dev. Co., 226 S.W. 965, 966 (Mo. Ct. App. 1920) (mules prone to kick). *But see* Denny v. City of Puxico, 4 S.W.2d 475, 476 (Mo. Ct. App. 1928) (court would not notice that a horse might stumble 40 feet before falling).

98. *See* Aeby v. Missouri Pac. Ry., 313 Mo. 492, 511, 285 S.W. 965, 970 (1926), *rev'd on other grounds,* 275 U.S. 426 (1928); Armstrong v. City of Monett, 228 S.W. 771, 775 (Mo. 1921); Missouri Pac. Ry. v. Terrell, 410 S.W.2d 356, 359-60 (Mo. Ct. App. 1966); Behm v. King Louie's Bowl, 350 S.W.2d 285, 289 (Mo. Ct. App. 1961); Hurley v. Illinois Central R.R., 221 Mo. App. 478, 482, 282 S.W. 97, 99 (1926); *cf.* State v. Sinovitch, 329 Mo. 909, 914, 46 S.W.2d 877, 879 (1932) (overcoats are in general use in Missouri during February). *But see* State v. Howard, 242 Mo. 432, 438, 147 S.W.95, 96 (1912) (court cannot judicially notice presence of clouds at a given time).

99. *See* Cudney v. Midcontinent Airlines, 363 Mo. 922, 930, 254 S.W.2d 662, 667 (1953) (en banc).

100. *See* Newton v. St. Louis & S.F. Ry., 222 Mo. 375, 394, 121 S.W. 125, 131

monly known; unique or obscure matters will not be noticed without evidence.[102]

Missouri courts must notice scientific facts[103] that are matters of common knowledge[104] and may notice scientific facts that are ascertainable by reference to a standard encyclopedia.[105] Notice has been taken that the telephone is essential to the safety, comfort, convenience, and social welfare of all people,[106] and that sewage disposal plants are essential to public health.[107] It has been said to be common knowledge that an electric light bulb will generate heat[108] and will burn out at unpredictable moments,[109] and that 69,000 volts of electricity can be lethal.[110] Judicial notice has been taken that an automobile speedometer reflects approximate speed, though considerable variance exists in the speedometers of different cars,[111] that radar speedometers measure speed in miles per hour,[112] and that such devices may not always operate accurately.[113] It has been said to be common knowledge that a fire may be started in combustible materials that are com-

(1909) (but court could not infer that wood used in blocking a switch on a track will rot between October and following August).

101. *See* Zickefoose v. Thompson, 347 Mo. 579, 590, 148 S.W.2d 784, 789 (1941).

102. *See* State v. Buckley, 318 Mo. 19, 27, 298 S.W. 777, 781 (1927).

103. *Id.* at 26, 298 S.W. at 781; State v. Stavricos, 506 S.W.2d 51, 57 (Mo. Ct. App. 1974).

104. Valley Spring Hog Ranch Co. v. Plagmann, 282 Mo. 1, 10, 220 S.W. 1, 3 (1920); Timson v. Manufacturers' Coal & Coke Co., 220 Mo. 580, 591, 119 S.W. 565, 569 (1909); State v. Stavricos, 506 S.W.2d 51, 57 (Mo. Ct. App. 1974); State v. Summers, 489 S.W.2d 225, 229 (Mo. Ct. App. 1972).

105. Felden v. Horton & Coleman, Inc., 234 Mo. App. 421, 424, 135 S.W.2d 1115, 1117 (1939).

106. *See* State *ex rel.* City of Lebanon v. Missouri Standard Tel. Co., 337 Mo. 642, 656, 85 S.W.2d 613, 620 (1935) (en banc). *See also* Hale v. Texas County, 178 S.W. 865, 865 (Mo. 1915) (telephone a necessity to probate judge).

107. *See* State *ex rel.* Schwab v. Riley, 417 S.W.2d 1, 4 (Mo. 1967) (en banc).

108. *See* Furlong v. Stokes, 427 S.W.2d 513 (Mo. 1968).

109. *See* Hopkins v. Sefton Fibre Can Co., 390 S.W.2d 907, 911 (Mo. Ct. App. 1965).

110. *See* Kamo Elec. Coop. v. Cushard, 416 S.W.2d 646, 658 (Mo. Ct. App. 1967).

111. *See* State v. Graham, 322 S.W.2d 188, 197 (Mo. Ct. App. 1959).

112. *See* City of St. Louis v. Boecker, 370 S.W.2d 731, 733 (Mo. Ct. App. 1963) (per curiam); State v. Graham, 322 S.W.2d 188, 195 (Mo. Ct. App. 1959). *Compare* State v. Smith, 637 S.W.2d 232, 237 (Mo. Ct. App. 1982) (suggests that appellate opinions have noticed the basis of neutron activation analysis) *with* Arnold v. Director of Revenue, 593 S.W.2d 624, 625-26 (Mo. Ct. App. 1980) (court could not judicially notice operative requirements of breathalyzers).

113. City of St. Louis v. Boecker, 370 S.W.2d 731 (Mo. Ct. App. 1963) (per curiam).

pressed or moist and that such a fire will smolder before flaming,[114] that gasoline is explosive when exposed to flame or spark,[115] and that liquified petroleum gas is combustible.[116]

Courts have taken notice that an object moving over a surface in a straight line will continue to move unless compelled by force to change direction.[117] Less commonly known facts have been noticed, including that cement contains lime,[118] that propane is heavier than air,[119] and that morphine is a derivative of opium.[120] The courts have refused to notice that lead balls are used exclusively in twenty-two caliber rifles, that a shot from such a rifle will make a hole in a man's skull larger than the diameter of the ball,[121] that a lead bullet fired from a pistol may not be deflected upon striking a human,[122] or that all coal mines generate deleterious gas.[123]

Missouri courts will notice medical practices,[124] as well as scientific knowledge accepted by the medical profession.[125] A court is justified in taking judicial knowledge of the reliability and value of properly performed blood tests.[126] Notice has been taken that serum blood tests cannot show that a person is the father of a child, but they can establish that he is not.[127] The laws of hygiene[128] and other medical facts are held to be common knowledge: that blood pressure may rise from pain, emotion, fright, and many other things,[129] that heart disease afflicts people in all walks of life, particularly in middle and advanced age,[130] that the limbosacral is a part

114. *See* Superior Ice & Coal Co. v. Belger Cartage Serv., 337 S.W.2d 897, 906 (Mo. 1960).

115. *See* Carter v. Skelly Oil Co., 363 Mo. 570, 573, 252 S.W.2d 306, 307 (1952).

116. *See* Grissom v. Handley, 410 S.W.2d 681, 686 (Mo. Ct. App. 1966).

117. *See* Prince v. Bennett, 322 S.W.2d 886, 890 (Mo. 1959).

118. *See* Baker v. Stewart Sand & Material Co., 353 S.W.2d 108, 112 (Mo. Ct. App. 1961).

119. *See* Grissom v. Handley, 410 S.W.2d 681, 686 (Mo. Ct. App. 1966).

120. *See* State v. Stavricos, 506 S.W.2d 51, 57 (Mo. Ct. App. 1974).

121. *See* State v. Buckley, 318 Mo. 17, 27, 298 S.W. 777, 781 (1927). *But c.f.* State v. Smith, 329 Mo. 272, 278, 44 S.W.2d 45, 48 (1931) (bullet would penetrate a human body to a considerable depth unless it struck thick bone).

122. *See* State v. Baker, 324 Mo. 846, 850, 24 S.W.2d 1039, 1040 (1930).

123. *See* Timson v. Manufacturers' Coal & Coke Co., 220 Mo. 580, 596, 119 S.W. 565, 568-69 (1909).

124. Rossomanno v. LaClede Cab Co., 328 S.W.2d 677, 682 n.1 (Mo. 1959) (en banc).

125. State v. Buckley, 318 Mo. 17, 26, 298 S.W. 777, 781 (1927); State v. Summers, 489 S.W.2d 225, 229 (Mo. Ct. App. 1972).

126. State v. Summers, 489 S.W.2d 225, 229 (Mo. Ct. App. 1972).

127. *Id.*

128. *See* Valley Spring Hog Ranch Co. v. Plagmann, 282 Mo. 1, 10, 220 S.W. 1, 3 (1920) (en banc).

129. *See* Scott v. Missouri Ins. Co., 222 S.W.2d 549, 554 (Mo. Ct. App. 1949), *aff'd,* 361 Mo. 51, 233 S.W.2d 660 (1950) (en banc).

130. *See* Liebrum v. Laclede Gas Co., 419 S.W.2d 517, 521 (Mo. Ct. App. 1967).

of the back and spine and that a disc is part of the spine,[131] that people need medical attention,[132] and that tonsils are not removed unless they are infected.[133] It has been noticed that normal human beings shrink from death,[134] that an excessive amount of whiskey stupifies the senses and renders physical powers impotent,[135] that a body member completely severed is lost forever,[136] that insanity may be transient,[137] that a person may be unconscious one moment and conscious the next,[138] and that a person thirty-five years old with no diseases or abnormalities may be expected to live a substantial number of years.[139]

It has been said to be common knowledge that foreign substances should not be lodged in an eye except as directed by a doctor,[140] that manual labor by persons whose physical condition is below normal would be harmful but not necessarily dangerous,[141] that the way a layman usually determines that he has a specific disease affecting an internal organ is to be so advised by a doctor,[142] and that involuntary civil commitment is stigmatizing.[143] Notice has also been taken that the normal human gestation period is 280 days,[144] that 229 days is not medically impossible,[145] and that miscarriages occur among pregnant women for many reasons, known and

131. *See* Pope v. St. Louis Pub. Serv. Co., 341 S.W.2d 123, 125 (Mo. 1960); *see also* Rockenstein v. Rogers, 326 Mo. 468, 487, 31 S.W.2d 792, 801 (1930) (sacroiliac joint is a part of the back).

132. *See* Thornsberry v. State Dept. of Pub. Health & Welfare, 285 S.W.2d 77, 86 (Mo. Ct. App. 1955), *rev'd on other grounds,* 365 Mo. 1217, 295 S.W.2d 372 (1956) (en banc).

133. *See* Carroll v. Missouri Power & Light Co., 231 Mo. App. 265, 271, 96 S.W.2d 1074, 1078 (1936).

134. *See* Edwards v. Business Men's Assurance Co., 350 Mo. 666, 680, 168 S.W.2d 82, 90 (1942); Griffith v. Continental Casualty Co., 299 Mo. 426, 445-46, 253 S.W. 1043, 1048 (1923) (en banc); Cope v. Thompson, 534 S.W.2d 641, 648 n.3 (Mo. Ct. App. 1976).

135. *See* State v. Rowe, 324 Mo. 863, 874, 24 S.W.2d 1032, 1038 (1930).

136. *See* Buillot v. Income Guar. Co., 231 Mo. App. 531, 544, 102 S.W.2d 132, 140 (1937).

137. *See* Forbis v. Forbis, 274 S.W.2d 800, 805 (Mo. Ct. App. 1955).

138. *See* Whiteacre v. Kelly, 345 Mo. 489, 495, 134 S.W.2d 121, 124 (1939).

139. *See* Bone v. General Motors Corp., 322 S.W.2d 916, 924 (Mo. 1959).

140. *See* Haberly v. Reardon Co., 319 S.W.2d 859, 867 (Mo. 1958) (en banc).

141. *See* Hamm v. Metropolitan Life Ins. Co., 237 Mo. App. 12, 26, 166 S.W.2d 324, 332 (1942). *But see* Cole v. Best Motor Lines, 303 S.W.2d 170, 174 (Mo. Ct. App. 1957) (court would not notice that man with a 10% disability could not change tractor tire).

142. *See* Baugh Life & Casualty Ins. Co., 307 S.W.2d 660, 666 (Mo. 1957); *see also* Aetna Life Ins. Co. v. Kelley, 70 F.2d 589, 593 (8th Cir. 1934) (layman cannot by superficial perception determine if he has arteriosclerosis).

143. *See* State *ex rel.* D.W. v. Hensley, 574 S.W.2d 389, 392 (Mo. 1978) (en banc) (Seiler, J., dissenting).

144. *See* State v. Drummins, 274 Mo. 632, 642, 204 S.W. 271, 274 (1918); *see also*

unknown.[146] The courts have refused, however, to notice the range of weight, length, and general condition of a seven month infant as compared with a nine month child, or that every seven month baby requires incubation.[147]

3. Business, Economics, and Professions

Notice has been taken that physicians frequently maintain offices in their residences,[148] that hospital bills include charges for medicine, food, and care,[149] and that medicine and osteopathy are distinct healing arts.[150] In 1927, notice was taken that progress had been made in raising standards of attainment for doctors and lawyers.[151] The courts consistently have refused, however, to notice the reasonableness of medical fees.[152] In 1959, the Missouri Supreme Court declined to decide whether the courts might notice that in the regular course of business doctors keep records of their patients' cases and make entries at or near the time of the event recorded.[153]

Courts notice permanent changes in social and economic conditions[154] as well as facts, trends, and events affecting value.[155] In 1946, the substantial increase in real estate values from 1937 to 1946 was said to be common knowledge,[156] and in 1920, it was said to be common knowledge that real estate prices had recently increased.[157] Judicial notice has been taken of the

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In re Marriage of B, 619 S.W.2d 91, 93 (Mo. Ct. App. 1981) (not every period of gestation is precisely 280 days).

145. *See* L.C.F. v. D.H.F., 333 S.W.2d 320, 327 (Mo. Ct. App. 1960). *But see* Boudinier v. Boudinier, 240 Mo. App. 278, 294, 203 S.W.2d 89, 98 (1947) (316 days is too long to warrant judicial notice).

146. *See* Gulley v. Spinnichia, 341 S.W.2d 301, 304 (Mo. Ct. App. 1960).

147. *See* L.C.F. v. D.H.F., 333 S.W.2d 320, 327 (Mo. Ct. App. 1960); *see also* Pflingsten v. Franklin Life Ins. Co., 330 S.W.2d 806, 814-15 (Mo. 1959) (refusal to notice that insured who allegedly had lung cancer on May 22 was not in good health on May 16 when life insurance policy was delivered).

148. *See* State *ex rel.* Kaegel v. Holekamp, 151 S.W.2d 685, 689 (Mo. Ct. App. 1941).

149. *See* Karagas v. Union Pac. R.R., 232 S.W. 1100, 1100 (Mo. Ct. App. 1921).

150. *See* Mitchem v. Perry, 390 S.W.2d 600, 604 (Mo. Ct. App. 1965).

151. *See* Horton v. Clark, 316 Mo. 770, 778, 293 S.W. 362, 364 (1927) (en banc).

152. *See, e.g.,* Richard B. Curnow, M.D., Inc. v. Sloan, 625 S.W.2d 605, 607 (Mo. 1981) (en banc).

153. *See* Rossomanno v. Laclede Cab Co., 328 S.W.2d 677, 682 (Mo. 1959) (en banc).

154. Hurst v. Chicago B. & Q.R.R., 280 Mo. 566, 573, 219 S.W. 566, 588 (1920).

155. Simpson v. Spellman, 522 S.W.2d 615, 621 (Mo. Ct. App. 1975).

156. *See* Kuhn v. Zepp, 355 Mo. 295, 303, 196 S.W.2d 249, 253 (1946) (en banc).

157. *See* Arnold v. Arnold, 332 Mo. 61, 66, 222 S.W. 996, 1000 (1920) (en banc); *see also In re* Marriage of Pine, 625 S.W.2d 942, 945 (Mo. Ct. App. 1981) (almost common knowledge that given present market for residential real estate, sale of family home is not possible without substantial loss). *But see* Berry v. Federal Kem-

collapse of farmland values during the depression[158] and of the rental and market value of real estate generally;[159] conversely, notice was taken of the fact that a collapse in stock values during the late depression largely was wiped out by improved economic conditions.[160] It has been said to be common knowledge that communities have used industrial revenue bonds to attract industry.[161] In 1979, it was noticed that the possibility of an oil embargo had been known for many years.[162]

The value of money has been said to be well within the knowledge of the average juror,[163] as is the effect of inflation.[164] Notice has been taken of a decrease in interest rates,[165] and of general facts about value: that modern household furnishings often exceed $500 in value,[166] that properties bring reduced prices at forced sales,[167] that rearing teenagers requires more than a meager allowance,[168] that new cars have always cost more than $30,[169] and that unforeseen events cause fluctuations in securities prices.[170] Changes or trends in the market value of real estate, however, are not subjects that permit a reliable generalization or judicial knowledge without evi-

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per Ins. Co., 621 S.W.2d 948, 953 (Mo. Ct. App. 1981) (refusal to notice changes or trends in market value).

158. *See* Thompson v. Thompson, 156 S.W.2d 937, 940 (Mo. Ct. App. 1941); *see also* Saline County v. Thorp., 337 Mo. 1140, 1145, 88 S.W.2d 183, 185 (1935) (decline in value of farmland).

159. *See* Krueger v. Licklider, 336 Mo. 1053, 1058, 76 S.W.2d 113, 117 (Mo. 1934); State *ex rel.* State Highway Comm'n v. Pope, 228 Mo. App. 888, 897, 74 S.W.2d 265, 270 (1934).

160. *See* Warmack v. Crawford, 239 Mo. App. 709, 717, 195 S.W.2d 919, 923 (1946).

161. *See* St. Louis County v. Village of Champ, 438 S.W.2d 205, 213 (Mo. 1969) (en banc).

162. *See* Missouri Pub. Serv. Co. v. Peabody Coal Co., 583 S.W.2d 721, 728 (Mo. Ct. App.), *cert. denied,* 444 U.S. 865 (1979).

163. *See* Hold v. Terminal R.R. Ass'n, 356 Mo. 412, 424, 201 S.W.2d 958, 964 (1947).

164. *See, e.g.*, Kieffer v. Kieffer, 590 S.W.2d 915, 917 (Mo. 1979) (en banc); Ward v. City Nat'l Bank & Trust Co., 379 S.W.2d 614, 620 (Mo. 1964); Marshall v. St. Louis Union Trust Co., 196 S.W.2d 435, 437 (Mo. 1946); Hurst v. Chicago B. & Q.R.R., 280 Mo. 566, 573, 219 S.W. 566, 568-69 (1920); Harrison v. Harrison, 606 S.W.2d 234, 235-36 (Mo. Ct. App. 1980); Morris v. Morris, 549 S.W.2d 363, 365 (Mo. Ct. App. 1977). *But see* Gambino v. Gambino, 636 S.W.2d 81, 83 (Mo. Ct. App. 1982) (judicial notice of inflation "can only go so far").

165. *See* Gershman Inv. Corp. v. Danforth, 475 S.W.2d 36, 37-38 (Mo. 1971) (en banc).

166. *See In re* Polizoe's Estate, 246 S.W.2d 391, 394 (Mo. Ct. App. 1952).

167. *See* Hamiltonian Fed. Sav. & Loan Ass'n v. Wendling, 199 S.W.2d 29, 37 (Mo. Ct. App. 1947).

168. *See* Franke v. Franke, 447 S.W.2d 308, 311 (Mo. 1969).

169. *See* State v. Haney, 284 S.W.2d 417, 418 (Mo. 1955).

170. *See* A.B. Collins & Co. v. Quentin, 71 S.W.2d 758, 760 (Mo. Ct. App. 1934).

dentiary proof;[171] a court will not take judicial notice of the value of a specific piece of realty,[172] the exact value of various goods,[173] or the reasonableness of fees for medical[174] and other services involving special skills.[175]

In 1926, judicial notice was taken that agriculture was Missouri's chief source of wealth,[176] and it has been said to be common knowledge that hand-picked cotton is more valuable than machine-picked cotton.[177] Notice also has been taken of the nature of certain crops[178] and their harvest times.[179]

Notice has been taken of facts about bankers,[180] banking practices,[181] insurance practices,[182] and the rights of insureds.[183] It has been said to be well-known that those who investigate and settle personal injury claims become imbued with prejudice against the validity and extent of those

171. Berry v. Federal Kemper Ins. Co., 621 S.W.2d 948, 953 (Mo. Ct. App. 1981); Kirst v. Clarkson Constr. Co., 395 S.W.2d 487, 498 (Mo. Ct. App. 1965); Warmack v. Crawford, 239 Mo. App. 709, 717, 195 S.W.2d 919, 923 (1946). *But cf.* Cupples Hesse Corp. v. State Tax Comm'n, 329 S.W.2d 696, 700 (Mo. 1959) (court "may know" of the increase in building costs from 1937 to 1942).

172. Cummins v. Dixon, 265 S.W.2d 386, 397 (Mo. 1954); De Paige v. Douglas, 234 Mo. 78, 84, 136 S.W. 345, 347 (1911). *But see* Collector of Revenue v. Parcels of Land, 362 Mo. 1054, 1067, 247 S.W.2d 83, 91 (1952) (en banc) (noticed assessed valuations shown in the Journal of the State Board of Equalization).

173. *See, e.g.,* Bybee v. Dixon, 380 S.W.2d 539, 543 (Mo. Ct. App. 1964); State v. E.T. Swiney Motor Co., 244 S.W.2d 408, 410 (Mo. Ct. App. 1951).

174. Richard B. Curnow, M.D., Inc. v. Sloan, 625 S.W.2d 605, 607 (Mo. 1981) (en banc). *But see In re* Winschel's Estate, 393 S.W.2d 71, 77 (Mo. Ct. App. 1965) (reasonable value of domestic and nursing services rendered to a deceased is a matter of common knowledge); Boyher v. Gearhart Estate, 367 S.W.2d 1, 5 (Mo. Ct. App. 1963) (same).

175. McCardie & Akers Constr. Co. v. Bonney, 647 S.W.2d 193, 194-95 (Mo. Ct. App. 1983) (value of construction work); St. Charles Flour Co. v. Hoelzer, 565 S.W.2d 844, 847 (Mo. Ct. App. 1978) (same); Boggess v. Cunningham's Estate, 207 S.W.2d 814, 820 (Mo. Ct. App. 1948) (financial agent's services). *But cf.* Strauser v. Estate of Strauser, 573 S.W.2d 423, 424 (Mo. Ct. App. 1978) (showing of reasonable value necessary to quantum meruit recovery not necessary where the value of a particular service is common knowledge).

176. *See* Jasper County Farm Bureau v. Jasper County, 315 Mo. 560, 566, 286 S.W. 381, 383 (1926).

177. *See* Moore v. St. Louis S.W. Ry., 301 S.W.2d 395, 404 (Mo. Ct. App. 1957).

178. *See* Gipson v. Fisher Bros. Co., 204 S.W.2d 101, 106 (Mo. Ct. App. 1947).

179. *See* Garth v. Caldwell, 72 Mo. 622, 628 (1880); Plano Mfg. Co. v. Cunningham, 73 Mo. App. 376, 379 (1898). *But see* Culver v. Worts, 32 Mo. App. 419, 426 (1888) (court would not notice precise date of maturity).

180. *See* State v. McBrien, 266 Mo. 594, 609, 178 S.W. 489, 493 (1915).

181. *See* State v. Morro, 313 Mo. 114, 125, 280 S.W. 697, 700 (1926).

182. *See* Prange v. International Life Ins. Co., 329 Mo. 651, 656, 46 S.W.2d 523, 524 (1931).

183. *See* National Union Fire Ins. Co. v. Nevils, 217 Mo. App. 630, 639-40, 274 S.W. 503, 506 (1925)

claims.[184] Notice has been taken that when property is sold under deferred payments, sellers protect their interests with insurance, and that the purchasers pay the premiums.[185] An appellate court noticed that the faces of insurance policies do not contain the whole contract.[186] A request that a trial court notice that Allstate was owned by Sears, Roebuck & Co. was denied.[187]

Notice has been taken of the standard gauge of railroad track[188] and other facts relating to trains. Courts have noticed that locomotives and railroad cars are wider than tracks[189] and are interchanged among various carriers.[190] In 1960, notice was taken that some efforts had recently been made to increase train crew numbers.[191] In 1968, notice was taken that the number of passenger trains operated in Missouri had steadily declined over the preceding ten years.[192] It has been said to be common knowledge that properly operated trains are subject to irregular movement without negligence on anyone's part,[193] that all trains make noise when operating,[194] and that the passage of trains at high speed sets up air currents which whip up dirt, dust and other debris.[195] Similarly, it has been noticed that railroad tracks and yards are beset with embankments, ditches, culverts, and other

184. *See* Bright v. Sammons, 214 S.W. 425, 426 (Mo. Ct. App. 1919).

185. *See* Edwards v. Zahner, 395 S.W.2d 185, 191 (Mo. 1965).

186. *See* Steinzeig v. Mechanics & Traders Ins. Co., 297 S.W.2d 778, 781 (Mo. Ct. App. 1957).

187. *See* Morrow v. Zigaitis, 608 S.W.2d 427, 428 (Mo. Ct. App. 1980).

188. West v. St. Louis & S.F. Ry., 295 S.W.2d 48, 52 (Mo. 1956); Lang v. St. Louis & S.F. Ry., 364 Mo. 1147, 1152, 273 S.W.2d 270, 273 (1954); Hunt v. Chicago M. St. P. & P. Ry., 359 Mo. 1089, 1094, 225 S.W.2d 738, 740 (1949) (en banc); Finley v. Illinois Cent. Ry., 251 S.W.2d 713, 724 (Mo. Ct. App. 1952).

189. *See* Metton v. St. Louis Pub. Serv. Co., 363 Mo. 474, 482, 251 S.W.2d 663, 667 (1952) (en banc); Taylor v. Missouri, Kan. & Tex. Ry., 357 Mo. 1086, 1089, 212 S.W.2d 412, 414 (1948).

190. *See* Doering v. St. Louis & O'Fallon Ry., 63 S.W.2d 450, 452 (Mo. Ct. App. 1933); *see also* Markley v. Kansas City So. Ry., 338 Mo. 436, 446, 90 S.W.2d 409, 414 (1936) (railroad records show when each car is delivered, length of service, and recent use).

191. *See* State *ex rel.* Chicago, Rock Island & Pac. R.R. v. Public Serv. Comm'n, 335 S.W.2d 182, 188 (Mo. 1960) (en banc).

192. *See* State *ex rel.* Orscheln Bros. Truck Lines v. Public Serv. Comm'n, 433 S.W.2d 596, 597-98 (Mo. Ct. App. 1968). *See also* State *ex rel.* Chicago, Rock Island & Pac. R.R. v. Public Serv. Comm'n, 312 S.W.2d 791, 803 (Mo. 1958) (en banc) (development of highways, motor vehicles, and aircraft has curtailed railroad business).

193. *See* Dunn v. Alton Ry., 88 S.W.2d 224, 229 (Mo. Ct. App. 1935).

194. *See* Rhinberger v. Thompson, 356 Mo. 520, 525, 202 S.W.2d 64, 68 (1947) (en banc).

195. Fitzpatrick v. St. Louis & S.F. Ry., 300 S.W.2d 490, 496 (Mo. 1957). *See also* Cooperative Ass'n No. 37 v. St. Louis & S.F. Ry., 591 S.W.2d 404, 409 (Mo. Ct. App. 1979) (Titus, J., dissenting) (steam locomotives emit sparks).

offsets such that it would be impractical to have guardrails to protect employees,[196] and that train engineers require reaction time to see dangers and brake.[197] An appellate court refused to take judicial notice of the duties performed by brakemen[198] or notice that the boiler on the engine obstructed the engineer's view from a point 350 feet from the collision.[199]

Notice has been taken that a gasoline filling station deals in and stores highly combustible products.[200] It has been said to be well-known that customers in self-service stores freely exercise the privilege of moving, handling, and examining items displayed for sale.[201] Similarly, it has been said to be common knowledge that building owners customarily provide plate-glass show windows for the display of merchandise, that the owners or their tenants encourage the public to view the items displayed,[202] that it is the practice of automobile dealers to permit test driving,[203] that several inches of top soil are included in the sale of sod,[204] and that cemeteries are not sold on the open market.[205]

Notice was taken in 1973 that the standard commission in a county on farmland sales was 5%.[206] An appellate court refused, however, to notice that a product is sold through exclusive franchises, or that a shop is located within a franchise territory.[207]

Missouri courts will notice facts relating to sports, including the fact that injury is a normal incident of professional football,[208] and that golf

196. *See* Ferguson v. St. Louis & S.F. Ry., 307 S.W.2d 385, 387 (Mo. 1957) (en banc), *rev'd on other grounds,* 356 U.S. 41 (1958).

197. *See* Stark v. Berger, 344 Mo. 170, 175, 125 S.W.2d 870, 872 (1939) (en banc); McGowan v. Wells, 324 Mo. 652, 656, 24 S.W.2d 633, 639 (1929); Doelling v. St. Louis Pub. Serv. Co., 258 S.W.2d 244, 248 (Mo. Ct. App. 1953).

198. *See* Gannaway v. Pitcairn, 109 S.W.2d 78, 82 (Mo. Ct. App. 1937). *But see* Talbert v. Chicago R.I. & P. Ry., 321 Mo. 1080, 1086, 15 S.W.2d 762, 764 (brakemen may be obliged to walk on tract to adjust defective couplers), *cert. denied,* 280 U.S. 567 (1929).

199. *See* Fitzgerald v. Thompson, 238 Mo. App. 546, 560, 184 S.W.2d 198, 206 (1944); March v. Pitcairn, 125 S.W.2d 972, 974 (Mo. Ct. App. 1939).

200. *See* Whitehead v. Schrick, 328 S.W.2d 170, 175 (Mo. Ct. App. 1959).

201. *See* Copher v. Barbee, 361 S.W.2d 137, 143 (Mo. Ct. App. 1962).

202. *See* Leisure v. J.A. Bruening Co., 315 S.W.2d 705, 707-08 (Mo. 1958).

203. *See* Allstate Ins. Co. v. Hartford Accident & Indem. Co., 311 S.W.2d 41, 47 (Mo. Ct. App. 1958).

204. *See* Miller v. Sabinske, 322 S.W.2d 941, 949 (Mo. Ct. App. 1959).

205. *See* State *ex rel.* State Highway Comm'n v. Mount Moriah Cemetery Ass'n, 434 S.W.2d 470, 473 (Mo. 1968).

206. *See* Brooks v. Kunz, 637 S.W.2d 135, 141 (Mo. Ct. App. 1982).

207. *See* Williams v. Coca-Cola Bottling Co., 285 S.W.2d 53, 56 (Mo. Ct. App. 1955).

208. *See* Palmer v. Kansas City Chiefs Football Club, 621 S.W.2d 350, 356 (Mo. Ct. App. 1981).

courses require large areas.[209] The courts generally have refused to notice facts relating to card games or gambling.[210] An appellate court refused to notice that rummy is a game of chance played with cards,[211] and courts have refused to notice what constitutes a crap table[212] or how the game is played.[213] Similarly, absent a showing that it is played with cards, the supreme court refused to notice that poker is a game of chance.[214]

Courts have noticed that janitorial work has become a trade, and that many concerns contract to have such work done after the day's business.[215] It has been said to be common knowledge that many persons engage in service work as an independent calling or occupation,[216] and that no place of business is as safe from disease and fire as one's own home.[217] Similarly, notice has been taken of reciprocity agreements regarding nursing licenses,[218] that it is virtually impossible for a sixty-three year-old woman to find satisfactory employment,[219] and that those who transport property sometimes protect it by carrying firearms.[220] Missouri courts also have noticed the usual course of business of the mails,[221] that mail is not delivered on Christmas,[222] that a road contractor was not responsible for the location of the highway he was building,[223] and that many corporations are organ-

209. *See* Aquamsi Land Co. v. City of Cape Girardeau, 346 Mo. 524, 532, 142 S.W.2d 332, 336 (1940).

210. *But cf.* Spinelli v. United States, 393 U.S. 410, 418 (1969) (bookmaking is often carried out over the telephone); State v. Turlington, 200 Mo. App. 192, 197, 204 S.W. 821, 823 (1918) (many people have a gambling instinct).

211. *See* State v. Stewart, 228 Mo. App. 187, 191, 63 S.W.2d 210, 213 (1933).

212. *See* State v. Chaney, 188 S.W.2d 19, 20 (Mo. 1945).

213. *See* State v. Wade, 267 Mo. 249, 261, 183 S.W. 598, 601 (1916).

214. *See* State v. Solon, 247 Mo. 672, 682, 153 S.W. 1023, 1025 (1913).

215. *See* Wooten v. Youthcraft Mfg. Co., 312 S.W.2d 1, 3 (Mo. 1958).

216. *See* Dean v. Young, 396 S.W.2d 549, 554 (Mo. 1965).

217. *See* City of Wash. v. Mueller, 218 S.W.2d 801, 803 (Mo. Ct. App. 1949).

218. *See* Toomey v. Toomey, 636 S.W.2d 313, 314 (Mo. 1982) (en banc), *cert. denied,* 103 S. Ct. 730 (1983).

219. *See* Feinberg v. Pfeiffer Co., 322 S.W.2d 163, 169 (Mo. Ct. App. 1959); *see also* Martin v. Star Cooler Corp., 484 S.W.2d 32, 35 (Mo. Ct. App. 1972) (relatively uneducated and unskilled working man with only part of a hand is at a disadvantage in the labor market); *cf.* Hopkins v. North Am. Co., 594 S.W.2d 310, 315 n.4 (Mo. Ct. App. 1980) (en banc) (individual may have more than one employment or occupation).

220. *See* Arnold v. Wigdor Furniture Co., 281 S.W.2d 789, 793 (Mo. 1955).

221. *See* McCaskey Register Co. v. Erffmeyer, 46 S.W.2d 256, 257 (Mo. Ct. App. 1932); German-Am. Bank v. Cramery, 184 Mo. App. 481, 482, 171 S.W. 31, 32 (1914). *But see* Hood v. M.F.A. Mut. Ins. Co., 379 S.W.2d 806, 811 (Mo. Ct. App. 1964).

222. *See* Deffendoll v. Stupp Bros. Bridge & Iron Co., 415 S.W.2d 36, 42 (Mo. Ct. App. 1964). *But see* Hoelscher v. Sel-Mor Garment Co., 430 S.W.2d 745, 748 (Mo. Ct. App. 1968) (courts will not notice exact time of mail delivery).

223. *See* Slicer v. W.J. Menefee Constr. Co., 270 S.W.2d 778, 781 (Mo. 1954).

ized under Delaware law although they do business elsewhere.[224] An appellate court has refused, however, to notice relations between post offices regarding routing practices and postal transport,[225] or that employers ask prospective employees if they have arrest records.[226]

4. Motor Vehicles

Missouri cases have taken judicial notice of facts relating to motor vehicles of all kinds.[227] It has been said to be common knowledge that motor vehicles are deadly and destructive,[228] and that motorists from many parts of the United States frequently use the principal highways of the various states.[229] The courts have noticed that a pickup truck is a motor vehicle,[230] that half-ton pickups are commonly used as passenger vehicles, and that these trucks bear freight and merchandise.[231] Judicial notice has been taken that traffic noise, particularly from trucks, may be heard for a considerable distance,[232] but the Missouri Supreme Court refused to notice that the left rear of a trailer sways to the left when the tractor sways to the right.[233] Courts have noticed facts relating to the construction of automobiles, including that the lights of automobiles of standard height are about three feet above the ground,[234] that headlight rays diverge and illuminate not only the road ahead but the side of the road,[235] that the distance between the front tires of a automobile is about four and one-half feet,[236]

224. *See* State v. Tustin, 322 S.W.2d 179, 182 (Mo. Ct. App. 1959).

225. *See* Hoelscher v. Sel-Mor Garment Co., 430 S.W.2d 745, 748 (Mo. Ct. App. 1968).

226. *See* Schwane v. Kroger Co., 480 S.W.2d 113, 116-17 (Mo. Ct. App. 1972).

227. Brooks v. Stewart, 335 S.W.2d 104, 112 (Mo. 1960); Spoeneman v. Uhri, 332 Mo. 821, 828-29, 60 S.W.2d 9, 12 (1933).

228. *See* Hay v. Ham, 364 S.W.2d 118, 122 (Mo. Ct. App. 1962); *see also* Bowman v. Kansas City, 361 Mo. 14, 27, 233 S.W.2d 26, 34 (1950) (en banc) (great increase in the number of motor vehicles).

229. *See* Davis v. Illinois Terminal R.R., 326 S.W.2d 78, 86 (Mo. 1959).

230. *See* State v. Thornton, 441 S.W.2d 738, 741 (Mo. Ct. App. 1969).

231. *See* English v. Old Am. Ins. Co., 426 S.W.2d 33, 36 (Mo. 1968). Missouri courts have refused to take notice of which use is primary. *See id.* at 37.

232. *See* St. Joseph Light & Power Co. v. Ohlhausen, 621 S.W.2d 301, 303 (Mo. Ct. App. 1981).

233. *See* Hanff v. St. Louis Pub. Serv. Co., 355 S.W.2d 922, 926 (Mo. 1962).

234. *See, e.g.,* State *ex rel.* Kan. City S. Ry. v. Shain, 340 Mo. 1195, 1205, 105 S.W.2d 915, 921 (1937), *quashing* Adams v. Kansas City S. Ry. 83 S.W.2d 913 (1937) (en banc).

235. *See* Grimes v. St. Louis & S.F. Ry., 341 Mo. 129, 136, 106 S.W.2d 462, 465 (1937); Hauck v. Kansas City Pub. Serv. Co., 239 Mo. App. 1092, 1103, 200 S.W.2d 608, 614 (1947).

236. *See* Perry v. Dever, 303 S.W.2d 1, 7 (Mo. 1957); Fisher v. Gunn, 270 S.W.2d 869, 873 (Mo. 1954); Wallen v. Mississippi River & B.T. Ry., 267 S.W. 12, 14 (Mo. Ct. App. 1924).

and that ordinarily car length does not exceed twenty feet.[237] Judicial notice has been taken of facts relating to parking lots,[238] filling stations,[239] tires,[240] and the construction of streets and roadways.[241] Notice has been taken that an outboard racing motor does not have a perpetual existence,[242] and that gasoline is used to operate farm machinery, motor scooters, motorcycles, outboard motors, lawn mowers, and pumps.[243]

Courts have noticed that people are made aware of peril through warnings,[244] and that a person in front of a moving car cannot accurately judge its speed.[245] While the courts will not take judicial notice of the exact distance within which a particular vehicle can be stopped,[246] they will note the limits[247] or at least the maximum distances within which a truck[248] or a car[249] can be stopped. Courts readily note the number of feet per second

237. *See* Bauman v. Conrad, 342 S.W.2d 284, 288 (Mo. Ct. App. 1961).

238. *See, e.g.,* Bowman v. Kansas City, 361 Mo. 14, 27-28, 233 S.W.2d 26, 35 (1950) (en banc); Hopkins v. Sefton Fibre Can Co., 390 S.W.2d 907, 912 (Mo. Ct. App. 1965).

239. *See* Walters v. Markwardt, 361 Mo. 936, 939, 237 S.W.2d 177, 179 (1951) (fences would unreasonably interfere with use of grease pits in filling stations).

240. *See* Searry v. Neal, 509 S.W.2d 755, 760 (Mo. Ct. App. 1974); Crupe v. Spicuzza, 86 S.W.2d 347, 350-51 (Mo. Ct. App. 1935).

241. *See* Fletcher v. North Mehornay Furniture Co., 359 Mo. 607, 614, 222 S.W.2d 789, 792 (1949); Domitz v. Springfield Bottlers, 359 Mo. 412, 414, 221 S.W.2d 831, 832 (1949); Bridges Asphalt Co. v. Jacobsmyer, 346 Mo. 609, 613, 142 S.W.2d 641, 643 (1940).

242. *See* Brunswick Corp. v. Hering, 619 S.W.2d 950, 953 (Mo. Ct. App. 1981).

243. *See* Tharp v. Monsees, 327 S.W.2d 889, 897 (Mo. 1959) (en banc).

244. *See* Thompson v. Quincy, O. & K.C. Ry., 18 S.W.2d 401, 406 (Mo. 1929).

245. *See* O'Donnell v. Wells, 323 Mo. 1170, 1178, 21 S.W.2d 762, 765 (1929); *see also* Finch v. Kegevic, 486 S.W.2d 515, 521 (Mo. Ct. App. 1972) (the sight of a car 200 feet away traveling 30 miles an hour gives no impression of danger).

246. Highfill v. Brown, 340 S.W.2d 656, 664 (Mo. 1960) (en banc).

247. *Id.;* Spoeneman v. Uhri, 332 Mo. 821, 829, 60 S.W.2d 9, 12 (1933).

248. *See, e.g.,* Hinrichs v. Young, 403 S.W.2d 642, 644 (Mo. 1966); Richardson v. Wendel, 401 S.W.2d 455, 458 (Mo. 1966); Johnson v. Kansas City Pub. Serv. Co., 358 Mo. 253, 260, 214 S.W.2d 5, 10 (1948); Hutchinson v. Thompson, 175 S.W.2d 903, 909-10 (Mo. 1943); Zickefoose v. Thompson, 347 Mo. 579, 590, 148 S.W.2d 784, 790 n.* (1941); Stimage v. Union Elec. Co., 465 S.W.2d 23, 26 (Mo. Ct. App. 1971); Crane v. Sirkin & Needles Moving Co., 85 S.W.2d 911, 914 (Mo. Ct. App. 1935); Johnson v. Missouri Pac. Ry., 72 S.W.2d 889, 895 (Mo. Ct. App. 1934).

249. Nelms v. Bright, 299 S.W.2d 483, 490 (Mo. 1957); State v. Manning, 612 S.W.2d 823, 826 n.4 (Mo. Ct. App. 1981); Eaves v. Wampler, 390 S.W.2d 922, 930 (Mo. Ct. App. 1965). *See, e.g.,* McCarthy v. Wulff, 452 S.W.2d 164, 169 (Mo. 1970); Richardson v. Wendel, 401 S.W.2d 455, 459 (Mo. 1966); Losh v. Benton, 382 S.W.2d 617 (Mo. 1964); Wegener v. St. Louis County Transit Co., 357 S.W.2d 943, 947 (Mo. 1962) (en banc); Perry v. Dever, 303 S.W.2d 1, 7 (Mo. 1957); Cope v. Thompson, 534 S.W.2d 641, 645 (Mo. Ct. App. 1976); Finch v. Kegevic, 486 S.W.2d 515, 520 (Mo. Ct. App. 1972); Loyd v. Moore, 390 S.W.2d 951, 957 (Mo. Ct. App. 1965); Hildreth v. Key, 341 S.W.2d 601, 607 (Mo. Ct. App. 1960). *But see*

that can be traveled by a car moving at a certain speed in miles per hour.[250]

Notice has been taken that a modern car in good mechanical condition responds quickly and accurately to turns of the steering wheel[251] and is easily maneuverable,[252] and that time must elapse between when a motorist first sees a danger and the time when he applies the brakes.[253] In the absence of evidence on reaction time, courts judicially notice that three-fourths of a second is required.[254] There are cases, however, that suggest that it takes possibly a half[255] or even a full second[256] for a person con-

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Kinealy v. Goldstein, 400 S.W.2d 438, 446 (Mo. Ct. App. 1966) (time or distance it takes a vehicle to avoid an object is a matter for expert testimony, not judicial notice, given the factors of speed, size, and weight of vehicle, condition of brakes and road, and load). *See generally Judicial Notice—Disputability and Appellate Practice Regarding Judicial Notice of Stopping Distances,* 38 MO. L. REV. 678 (1973).

250. *See, e.g.,* Vietmeier v. Voss, 246 S.W.2d 785, 788 (Mo. 1952).

251. *See* Richardson v. Wendel, 401 S.W.2d 455, 458 (Mo. 1966); Payne v. Smith, 322 S.W.2d 764, 768 (Mo. 1959); Brown v. Callicotte, 73 S.W.2d 190, 193 (Mo. 1934) ("Present day automobiles respond quickly and accurately to the touch of the driver's hand on the steering wheel. The necessary impulse may be applied in an instant."), *quoted in* Perry v. Dever, 303 S.W.2d 1, 7 (Mo. 1957). Notice of the responsiveness of vehicles is usually taken in the context of finding that an accident could have been avoided by turning or swerving. *See* Jenkins v. Jordan, 593 S.W.2d 236, 239 (Mo. Ct. App. 1979) (en banc); Hildreth v. Key, 341 S.W.2d 601, 607 (Mo. Ct. App. 1960) (en banc).

252. *See* Taylor v. Keirn, 622 S.W.2d 778, 782 (Mo. Ct. App. 1981); Jenkins v. Jordan, 593 S.W.2d 236, 239 (Mo. Ct. App. 1979) (en banc).

253. *See* Vietmeier v. Voss, 246 S.W.2d 785, 788 (Mo. 1952); Dister v. Ludwig, 362 Mo. 162, 170, 240 S.W.2d 694, 698 (1951); Yeaman v. Storms, 358 Mo. 774, 779, 217 S.W.2d 495, 498 (1948); Reed v. Burks, 393 S.W.2d 377, 379 (Mo. Ct. App. 1965).

254. *See* Vaeth v. Gegg, 486 S.W.2d 625, 627-28 (Mo. 1972); Koogler v. Mound City Cab Co., 349 S.W.2d 233, 237 (Mo. 1961); McCreary v. Conroy, 611 S.W.2d 234, 235 (Mo. Ct. App. 1980); Gassiraro v. Merlo, 589 S.W.2d 632, 634 (Mo. Ct. App. 1979); Hill v. Barton, 579 S.W.2d 121, 132 (Mo. Ct. App. 1979); Bunch v. McMillian, 568 S.W.2d 809, 812 (Mo. Ct. App. 1978); Schneider v. Finley, 553 S.W.2d 727, 731 (Mo. Ct. App. 1977); *see also* West v. St. Louis & S.F. Ry., 295 S.W.2d 48, 54 (Mo. 1956); Wiseman v. Missouri Pac. R.R., 575 S.W.2d 742, 749 (Mo. Ct. App. 1978); Stegall v. Wilson, 416 S.W.2d 658, 663 (Mo. Ct. App. 1967); Johnson v. Weston, 330 S.W.2d 160, 163 (Mo. Ct. App. 1959); Edwards v. Dixon, 298 S.W.2d 466, 469 (Mo. Ct. App. 1957); McKinney v. Robbins, 273 S.W.2d 513, 517 (Mo. Ct. App. 1954). This time is generally used to determine whether a vehicle could have been stopped in time to avoid an accident. *See, e.g.,* Hickerson v. Portner, 325 S.W.2d 783, 786 (Mo. 1959); Danner v. Weinreich, 323 S.W.2d 746, 752 (Mo. 1959).

255. *See, e.g.,* Bray v. St. Louis & S.F. Ry., 259 S.W.2d 132, 140 (Mo. Ct. App. 1953) (car traveling 60 miles an hour would cover 44 feet before brakes could take effect).

256. *See, e.g.,* Doelling v. St. Louis Pub. Serv. Co., 258 S.W.2d 244, 248 (Mo. Ct. App. 1953).

fronted with a danger to react and avoid it.[257]

5. Language, Words, and Phrases

Missouri courts take judicial notice of facts relating to language; they have recognized that Spanish is the official language of Mexico,[258] and the plain meaning of words.[259] Judicial notice has been taken that "budget" has a well-recognized meaning,[260] that "printed" has a variety of meanings depending on the context,[261] that hootch, moonshine, and white mule connote the unlawful manufacture of whiskey,[262] and that whiskey is intoxicating.[263] Missouri courts have refused to notice that any beverage called beer contains alcohol.[264]

Judicial notice has been taken that "money" commonly means something of value.[265] It has been said to be common knowledge that "street" in a legal sense may encompass all the separate areas of an easement such as the parkway and the sidewalk,[266] and that lands surrounded by water are sometimes called islands.[267] The supreme court has refused to notice the definition of "female sportswear,"[268] but Missouri courts have noted the meaning of nicknames,[269] abbreviations,[270] and contractions.[271]

257. McKinney v. Robbins, 273 S.W.2d 513, 517 (Mo. Ct. App. 1954). *Cf.* Standard Oil Co. v. Crowl, 198 F.2d 580, 582 (8th Cir. 1952) (appreciable time).

258. *See* Booth v. Scott, 276 Mo. 1, 38, 205 S.W. 633, 644, *cert. denied,* 253 U.S. 475 (1918).

259. *See* First Nat'l Bank v. Danforth, 523 S.W.2d 808, 817 (Mo.), *cert. denied,* 421 U.S. 992, 1016 (1975).

260. *See* Graves v. Purcell, 337 Mo. 574, 583, 85 S.W.2d 543, 548 (1935) (en banc).

261. *See* State *ex rel.* Page v. Vossbrinck, 257 S.W.2d 208, 210 (Mo. Ct. App. 1953).

262. *See* State v. Wheeler, 318 Mo. 1173, 1178, 2 S.W.2d 777, 779 (1928); State v. Johnson, 292 S.W. 41, 42 (Mo. 1927); State v. Wright, 312 Mo. 626, 632, 280 S.W. 703, 705 (1926).

263. *See* State v. Wright, 312 Mo. 626, 632, 280 S.W. 703, 705 (1926).

264. *See* State v. Maupin, 268 S.W.2d 39, 40 (Mo. Ct. App. 1954). *But see* State v. Mitchell, 134 Mo. App. 540, 114 S.W. 1113 (1908).

265. *See* State v. Gabriel, 342 Mo. 519, 526, 116 S.W.2d 75, 78 (1938).

266. *See* Quinn v. Graham, 428 S.W.2d 178, 185 (Mo. Ct. App. 1968); *see also* Lilly v. Bosnell, 362 Mo. 444, 452-53, 242 S.W.2d 73, 76 (1951) (city block is about 300 feet).

267. *See* Conran v. Girvin, 341 S.W.2d 75, 82 (Mo. 1960) (en banc).

268. *See* Coach House v. Ward Parkway Shops, 471 S.W.2d 464, 467 (Mo. 1971).

269. *See* State v. Cook, 463 S.W.2d 863, 868 (Mo. 1971) ("Sam").

270. *See* State v. Dowling, 202 S.W.2d 580, 582 (Mo. Ct. App. 1947) ("d/b/a").

271. *See* South Mo. Land Co. v. Jeffries, 40 Mo. App. 360, 361 (1890) ("supt."). *But see* McNichol v. Pacific Express Co., 12 Mo. App. 401, 407 (1882).

6. Customs and Common Practices

Judicial notice has been taken of the normal walking speed.[272] It has been said that "the ordinary walking speed of the average man is two to three miles per hour, more nearly the latter,"[273] or 2.9 to 4.4 feet per second,[274] and that a ten year old would walk at approximately the same speed.[275] It has been said that the running speed of a nine year old child is around five or six miles an hour or 7.3 to 8.8 feet per second.[276]

Notice has been taken of the "curiosities and propensities of small children,"[277] including that young children like to put things in their mouths,[278] that their acts are wholly unpredictable,[279] and that a four year old has no appreciation of the dangers of a roadway.[280] Notice has been taken that memory fades with time,[281] that the Meramac River is known as a popular fishing spot,[282] and that people ordinarily do not enter cemeteries at night.[283] Courts have noted that golfers call "fore" before swinging,[284] and that people observe daylight time by setting their clocks forward one hour on the last Sunday in April.[285] It has been said to be common knowledge that an individual's handwriting varies noticeably from time to time,[286] that one intending to shoot himself would be likely to place the

272. Robinson v. Richardson, 484 S.W.2d 27, 29 (Mo. Ct. App. 1972).

273. *See* Dister v. Ludwig, 362 Mo. 162, 170, 240 S.W.2d 694, 698 (1951) (en banc) (average man walking a little faster gait would travel approximately 3½ miles per hour). *But cf.* Schilling v. Bi-State Dev. Agency, 414 S.W.2d 818, 826 (Mo. Ct. App. 1967) (fact that a normal walking step is 2.5 feet is not of sufficient notoriety to deserve notice).

274. McFarland v. Wildhaber, 334 S.W.2d 1, 3 (Mo. 1960). *See* State v. Burley, 523 S.W.2d 575, 579 (Mo. Ct. App. 1975) (average walking speed is 2.9 to 4.4 feet per second and notice was taken that average man can walk a mile in 15 minutes); *see also* Miller v. St. Louis Pub. Serv. Co., 389 S.W.2d 769, 772 (Mo. 1965); Bunch v. Mueller, 365 Mo. 494, 498, 284 S.W.2d 440, 443 (1955) (en banc); Delay v. Ward, 364 Mo. 431, 442, 262 S.W.2d 628, 635 (1953) (en banc); Edwards v. Dixon, 298 S.W.2d 466, 469 (Mo. Ct. App. 1957).

275. *See* Bunch v. Mueller, 365 Mo. 494, 498, 284 S.W.2d 440, 443 (1955) (en banc).

276. *See* Edwards v. Dixon, 298 S.W.2d 466, 469 (Mo. Ct. App. 1957).

277. Norwood v. Lazarus, 634 S.W.2d 584, 587 (Mo. Ct. App. 1982).

278. *See* Davoren v. Kansas City, 308 Mo. 513, 514, 273 S.W. 401, 404 (1925).

279. *See* Ozbun v. Vance, 323 S.W.2d 771, 775 (Mo. 1959).

280. *Id.*

281. *See* Klopstein v. Schroll House Moving Co., 425 S.W.2d 498, 504 (Mo. Ct. App. 1968).

282. *See* Elder v. Delcour, 364 Mo. 835, 839, 269 S.W.2d 17, 20 (1954) (en banc).

283. *See* State v. Metje, 269 S.W.2d 128, 131 (Mo. Ct. App. 1954).

284. *See* Page v. Unterreiner, 106 S.W.2d 528, 532 (Mo. Ct. App. 1937).

285. *See* Playboy Club, Inc. v. Myers, 431 S.W.2d 228, 231 (Mo. 1968).

286. *See* Whetsel v. Forgey, 323 Mo. 681, 691, 20 S.W.2d 523, 526 (1929).

weapon near or against himself,[287] that property taxes are paid annually at the end of the year,[288] and that gasoline used in farm machinery, motor scooters, motorcycles, outboard motors, lawn mowers, and pumps is poured from containers into gas tanks.[289]

It has been said to be common knowledge that a curved and raised surface can cause a person to fall and is not as safe as a flat surface,[290] and that swimming pools are often present in parks and playgrounds.[291] While the Missouri Supreme Court has taken judicial notice that bachelor apartments ordinarily do not have kitchens,[292] the court has refused to notice the time at which occupants of certain residences are likely to retire,[293] the address at which a person lived, the character of a neighborhood,[294] or that it is customary to have railings on the front porches of public buildings.[295] Courts have refused to notice that it is customary to put lights on bicycles used at night[296] or that it is customary to leave hay chutes in a barn open.[297] While it has been said to be common knowledge that clothes trees are in general use,[298] the supreme court has refused to notice that trees of a particular construction are customarily used in restaurants.[299]

7. Law and Legal Processes

It has been said to be common knowledge that persons of good character are less likely to commit crimes than people of lesser character,[300] and judicial notice has been taken that it is much easier to prove the good repu-

287. *See* Lynch v. Railway Mail Ass'n, 375 S.W.2d 216, 218 (Mo. Ct. App. 1964).

288. *See* Kirkpatrick v. Rose, 344 S.W.2d 59, 60-61 (Mo. 1961).

289. *See* Tharp v. Monsees, 327 S.W.2d 889, 897 (Mo. 1959) (en banc).

290. *See* Ecker v. Big Bend Bank, 407 S.W.2d 45, 47 (Mo. Ct. App. 1966).

291. *See* Berberich v. Concordia Gymnastic Soc'y, 402 S.W.2d 582, 585 (Mo. Ct. App. 1966).

292. *See* Evans v. Roth, 356 Mo. 237, 249, 201 S.W.2d 357, 364 (1947) (en banc).

293. *See* Sandbothe v. City of Olivette, 647 S.W.2d 198, 204 (Mo. Ct. App. 1983).

294. *See* Calvin F. Feutz Funeral Home v. Estate of Werner, 417 S.W.2d 25, 28 (Mo. Ct. App. 1967).

295. *See* Endicott v. St. Regis Inv. Co., 443 S.W.122, 126 (Mo. 1969); *see also* Shaw v. Butterworth, 327 Mo. 622, 630, 38 S.W.2d 57, 61 (1931) (secondary purpose of screens is keeping people from falling through windows and they should withstand pressure of someone leaning on them).

296. *See* Beebe v. Kansas City, 223 Mo. App. 642, 646, 17 S.W.2d 608, 610 (1929).

297. *See* Moellman v. Gieze-Henselmeier Lumber Co., 134 Mo. App. 485, 489-90, 114 S.W. 1023, 1024 (1908).

298. Freeman v. Myron Green Cafeterias Co., 317 S.W.2d 303, 306 (Mo. 1958) (en banc).

299. *See id.*

300. State v. Gurnee, 309 Mo. 6, 17, 274 S.W. 58, 61 (1925).

tation of a party or witness than to impeach it.[301] It has been said to common knowledge that wills often contain latent ambiguities,[302] that workers' injuries are compensable without regard to fault,[303] and that witnesses cannot agree on the exact language in a statement.[304] Judicial notice may be taken that an article or treatise is authoritative for cross examination.[305]

Notice has been taken that firearms are deadly,[306] and that striking a person on the head with a pistol butt can cause death or great bodily harm.[307] It is common knowledge that burglaries occur,[308] even in buildings that have alarm systems and are not in high crime areas,[309] and that gloves and crowbars are tools of burglars and thieves.[310] Notice has been taken that robbers often leave cars with the engine running and a driver at the wheel to facilitate escape,[311] and that robbery victims are often forced into vehicles and transported to distant locations.[312] It has been said to be common knowledge that private persons rarely file complaints,[313] that persons who are indicted are not always apprehended during the term in which the indictment is returned,[314] that persons charged with offenses are confined in jails,[315] that fingerprints are taken of persons who are convicted or taken into custody,[316] that police officers officially report their findings connecting a defendant with an offense,[317] and that bloodhounds are used in apprehending escapees from penal institutions.[318] Judicial notice is one

301. *See* State v. Reed, 250 Mo. 379, 385, 157 S.W. 316, 318 (1913).

302. Bernheimer v. First Nat'l Bank, 359 Mo. 1119, 1121, 225 S.W.2d 745, 755 (1949).

303. Littel v. Bi-State Transit Dev. Agency, 423 S.W.2d 34, 37 (Mo. Ct. App. 1967).

304. *See* McBride v. Mercantile Commerce Bank & Trust Co., 330 Mo. 259, 272, 48 S.W.2d 922, 926 (1932); *see also* Messer v. St. Louis & S.F. Ry., 274 S.W. 864, 867 (Mo. Ct. App. 1925).

305. Kansas City v. Dugan, 524 S.W.2d 194, 197 (Mo. Ct. App. 1975).

306. *See, e.g.,* State v. Taylor, 182 S.W. 159, 161 (Mo. 1916) (pistol); State v. Mace, 262 Mo. 143, 153, 170 S.W. 1105, 1108 (1914) (shotgun).

307. *See* State v. Young, 570 S.W.2d 324, 326 (Mo. Ct. App. 1978).

308. Barad v. Leppert Roos Fur Co., 442 S.W.2d 104, 110 (Mo. Ct. App. 1969).

309. *Id.*

310. *See* State v. Russell, 324 S.W.2d 727, 731 (Mo. 1959).

311. *See* State v. Simon, 317 Mo. 336, 344, 295 S.W. 1076, 1079 (1927).

312. *See id.*

313. *See* State *ex rel.* McKittrick v. Graves, 346 Mo. 990, 1002, 144 S.W.2d 91, 98 (1940).

314. *See* State v. Malone, 301 S.W.2d 750, 755 (Mo. 1957).

315. *See* State v. Nasello, 325 Mo. 442, 468, 30 S.W.2d 132, 141 (1932).

316. *See* State v. Hampton, 275 S.W.2d 356, 359 (Mo. 1955).

317. *See* State v. Miller, 360 S.W.2d 633, 637 (Mo. 1962); State v. Hurd, 520 S.W.2d 158, 164 (Mo. Ct. App. 1975).

318. *See* State v. Fields, 434 S.W.2d 507, 517 (Mo. 1968).

means to establish that a party lacks standing.[319]

The courts will not take judicial notice of the existence of an antagonistic feeling against a defendant,[320] and an appellate court would not notice that there had been considerable publicity in the state concerning appointed counsel for indigent defendants.[321]

8. Public Officials

Missouri courts will take judicial notice of facts relating to public officers, including their authority, terms of office, signatures, and seals. Notice has been taken that the Secretary of State, the Director of Revenue, and the Superintendent of the State Highway Patrol all head executive departments with offices located in Jefferson City.[322] The powers and duties of a police judge,[323] that a certain person was a federal judge,[324] and that a person was no longer a magistrate[325] have all been noticed. Notice has been taken of the seals of notaries public,[326] various public authorities,[327] and state political subdivisions.[328]

9. Court Rules, Procedures, and Records

Appellate courts will not take judicial notice of circuit court rules[329] or customs;[330] if counsel relies on such rules, they must be made part of the

319. Spencer's River Road's Bowling Lanes v. Unico Management Co., 615 S.W.2d 121, 124 (Mo. Ct. App. 1981).

320. *See* State v. Arnett, 338 Mo. 907, 917, 92 S.W.2d 897, 903 (1936).

321. *See* State v. Lyell, 634 S.W.2d 239, 243 (Mo. Ct. App. 1982) (doubt as to notoriety).

322. *See* State *ex rel.* Toberman v. Cook, 365 Mo. 274, 279, 281 S.W.2d 777, 780 (1955) (en banc).

323. State v. White, 263 S.W. 192, 194 (Mo. 1924).

324. State v. Collins, 394 S.W.2d 368, 371 (Mo. 1965).

325. State *ex rel.* United Bonding Co. v. Kennedy, 364 S.W.2d 642, 643 (Mo. Ct. App. 1963).

326. *See* State v. Zehnder, 182 Mo. App. 161, 167, 168 S.W. 661, 662 (1914).

327. *See* MO. REV. STAT. § 104.190 (1978) (Highway Employees and Highway Patrol Retirement System); *id.* § 104.480 (Missouri State Employees Retirement System); *id.* § 226.100 (State Highway Commission); *id.* § 339.130 (Missouri Real Estate Commission); *id.* § 386.180 (Public Service Commission).

328. *See* Vanderhoff v. Lawrence, 201 S.W.2d 509, 511 (Mo. Ct. App. 1947); *see also* MO. REV. STAT. § 248.050 (1978) (requires notice of sanitary districts).

329. State v. Hinojosa, 242 S.W.2d 1, 6 (Mo. 1951). *See In re* Marriage of Dickey, 553 S.W.2d 538, 540 n.2 (Mo. Ct. App. 1977); Bank v. Pfeil, 537 S.W.2d 680, 681 (Mo. Ct. App. 1976); Head v. Ken Bender Buick Pontiac, 452 S.W.2d 596, 597 (Mo. Ct. App. 1970); Cusack v. Green, 252 S.W.2d 633, 635 (Mo. Ct. App. 1952); Bowen v. Mossman, 240 Mo. App. 1202, 1207, 226 S.W.2d 404, 407 (1950); Gilpin v. Aetna Fire Ins. Co., 234 Mo. App. 566, 585, 132 S.W.2d 686, 697 (1939); Fox Miller Grain Co. v. Stephens, 217 S.W. 994, 997 (Mo. Ct. App. 1920).

330. Bowen v. Mossman, 240 Mo. App. 1202, 1207, 226 S.W.2d 404, 407 (1950).

record.[331] Notice has been taken of terms of court,[332] where courts are held,[333] and that a given county circuit court is held in more than one place.[334]

A court can judicially notice its own records[335] and the files in the case before it,[336] and it has "long been settled that a court . . . should take judicial notice of its own records at prior proceedings which involve the same parties and basically the same facts."[337] Higher courts will take notice of their own records[338] and of the records of prior actions between the same parties in the same case,[339] including the proceedings below[340] as well as prior suits involving the same subject matter.[341] Appellate courts have acknowledged that a notice of appeal filed in a case originally named two

331. Bank v. Pfeil, 537 S.W.2d 680, 681 (Mo. Ct. App. 1976); Head v. Ken Bender Buick Pontiac, 452 S.W.2d 596, 598 (Mo. Ct. App. 1970).

332. *See* State *ex rel.* Midwest Pipe & Supply Co. v. Haid, 330 Mo. 1093, 1096, 52 S.W.2d 183, 185 (1932) (en banc).

333. *See* City of Charleston *ex rel.* Brady v. McCutcheon, 360 Mo. 157, 161, 227 S.W.2d 736, 739 (1950) (en banc).

334. *See* State v. Logan, 268 Mo. 169, 175, 186 S.W. 979, 980 (1916); *see also* State *ex rel.* Ford v. Hogan, 324 Mo. 1130, 1138, 27 S.W.2d 21, 23 (1930).

335. Knorp v. Thompson, 352 Mo. 44, 52, 175 S.W.2d 889, 894 (1943). *See, e.g.,* Bray v. Bray, 629 S.W.2d 658, 660 (Mo. Ct. App. 1982); Feese v. Feese, 613 S.W.2d 882, 886 (Mo. Ct. App. 1981); State v. Collett, 526 S.W.2d 920, 929 (Mo. Ct. App. 1975). *But see* Wolff v. Wolff, 628 S.W.2d 923, 924 n.2 (Mo. Ct. App. 1982) (refusal to notice memorandum cited from earlier hearing in same court by different judge).

336. Bayte v. State, 599 S.W.2d 231, 234 (Mo. Ct. App. 1980). *See, e.g.,* Franklin v. State, 572 S.W.2d 897, 898 (Mo. Ct. App. 1978).

337. Schrader v. State, 561 S.W.2d 734, 735 (Mo. Ct. App. 1978).

338. *See* State v. Johnson, 336 S.W.2d 668, 670 (Mo. 1960); State v. Green, 305 S.W.2d 863, 869 (Mo. 1957); State v. Collett, 526 S.W.2d 920, 929 (Mo. Ct. App. 1975). A court will ordinarily not take notice of facts in a party's brief. State v. Davit, 343 Mo. 1151, 1158, 125 S.W.21d 47, 52 (1938); Thompson v. State, 569 S.W.2d 380, 383 (Mo. Ct. App. 1978).

339. *See* State v. Thompson, 324 S.W.2d 133, 136 (Mo. 1959) (en banc) (notice that court had reviewed same issues on petition for writ of habeas corpus). In state habeas corpus cases, courts will take judicial notice of transcripts filed in earlier direct appeals. *See* Evans v. State, 639 S.W.2d 648, 649 (Mo. Ct. App. 1982); *see also* Langdon v. Koch, 435 S.W.2d 730, 733 (Mo. Ct. App. 1968) (notice on appeal of transcript filed in the first appeal of previously appealed and remanded case).

340. *See* State v. Keeble, 399 S.W.2d 118, 120 (Mo. 1966); First Nat'l Bank v. Christopher, 624 S.W.2d 474, 479 (Mo. Ct. App. 1981). The court of appeals may notice events occurring after notice of appeal if those events are closely interwoven or clearly interdependent with the appeal. Smitty's Super Mkts. v. Retail Store Employees Local 322, 637 S.W.2d 148, 151 (Mo. Ct. App. 1982). *But see* Cribbs v. Keystone Am. Serv. Corp., 572 S.W.2d 637, 638 (Mo. Ct. App. 1978).

341. *See, e.g.,* Burton v. State, 641 S.W.2d 95, 100 n.6 (Mo. 1982) (en banc) (previous circuit court order granting defendant an unconditional release from state hospital).

parties instead of the one shown in the transcript.[342]

In ruling on appeals from denials of habeas corpus motions, appellate courts have taken judicial notice of the procedural history[343] and transcripts of similar earlier motions.[344] Notice of the transcripts in criminal cases has been taken by courts of appeals[345] and the supreme court[346] in appeals from denials motions to vacate convictions. Trial courts may take judicial notice of their own records,[347] files,[348] and prior proceedings,[349] and the records and proceedings of appellate courts,[350] when the records relate to prior proceedings that include the same parties and the same facts.[351] When a party files a motion, a trial court is entitled to notice that a similar motion had already been filed and overruled, but not appealed.[352] A trial court may notice in one case a suit for an injunction which had been

342. *See* Kamo Elec. Coop. v. Brooks, 337 S.W.2d 444, 445 (Mo. Ct. App. 1960).

343. *See* Clark v. State, 602 S.W.2d 795, 797 (Mo. Ct. App. 1980).

344. *See* Keller v. State, 566 S.W.2d 260, 262 n.1 (Mo. Ct. App. 1978).

345. *See* Johnson v. State, 581 S.W.2d 847, 848 (Mo. Ct. App. 1979); Chambers v. State, 554 S.W.2d 112, 114 (Mo. Ct. App. 1977).

346. *See* State v. Hooper, 399 S.W.2d 115, 116 (Mo. 1966).

347. Arata v. Monsanto Chem. Co., 351 S.W.2d 717, 721 (Mo. 1961); Knorp v. Thompson, 352 Mo. 44, 52, 175 S.W.2d 889, 894 (1943); Bray v. Bray, 629 S.W.2d 658, 660 (Mo. Ct. App. 1982); Tudor v. Tudor, 617 S.W.2d 610, 614 (Mo. Ct. App. 1981); State v. Armstrong, 605 S.W.2d 526, 532 (Mo. Ct. App. 1980); Hankins v. Hankins, 462 S.W.2d 818, 826 (Mo. Ct. App. 1970); *see also* Wells v. Hartford Accident & Indem. Co., 459 S.W.2d 253, 256, 258 (Mo. 1970) (en banc) (trial court properly took notice of record in prior action which counsel asked to have noticed).

348. Pemberton v. Ladue Realty & Constr. Co., 359 Mo. 907, 908, 224 S.W.2d 383, 385 (1949); Vonder Haar Concrete Co. v. Edwards-Parker, Inc., 561 S.W.2d 134, 137 (Mo. Ct. App. 1978).

349. State v. Berry, 609 S.W.2d 948, 955 (Mo. 1980) (en banc); Pizzurro v. Estate of Hichew, 568 S.W.2d 263, 265 (Mo. 1978) (en banc); State v. Stidham, 403 S.W.2d 616, 618 (Mo. 1966); State v. Floyd, 403 S.W.2d 613, 615 (Mo. 1966); State v. Wade, 635 S.W.2d 51, 55 (Mo. Ct. App. 1982); State v. Moore, 633 S.W.2d 140, 146 (Mo. Ct. App. 1982); State v. Tettamble, 517 S.W.2d 732, 735 (Mo. Ct. App. 1974).

350. *See* Pemberton v. Ladue Realty & Constr. Co., 359 Mo. 907, 908, 224 S.W.2d 383, 384 (1949).

351. Schrader v. State, 561 S.W.2d 734, 735 (Mo. Ct. App. 1978). *See, e.g.,* Pizzurro v. Estate of Hichew, 568 S.W.2d 263, 265 (Mo 1978) (en banc); Land Clearance for Redev. Auth. v. Robinson, 611 S.W.2d 291, 292-93 (Mo. Ct. App. 1980); *see also* Hardin v. Hardin, 512 S.W.2d 851, 854 (Mo. Ct. App. 1974). *But see In re* Drew, 637 S.W.2d 772, 777-78 (Mo. Ct. App. 1982) (trial court did not err in refusing to take judicial notice of prior probate proceeding); Wolff v. Wolff, 628 S.W.2d 923, 924 n.2 (Mo. Ct. App. 1982) (trial court sustained in refusing to take judicial notice of a memorandum explaining a decision where the trial judge and the judge who approved an earlier decree which the memorandum accompanied were not the same).

352. Munday v. Thielecke, 483 S.W.2d 679, 682 (Mo. Ct. App. 1972).

instituted in the same court by the same parties.[353] Finally, notice of prior proceedings has been taken to determine whether punishment enhancement statutes apply,[354] and courts hearing post-conviction motions frequently notice the original proceedings.[355]

Missouri courts usually will not notice matters of record in other courts[356] or records and facts in other actions,[357] unless they are put in evidence.[358] The supreme court has refused to notice cited litigation involving the same subject matter as the case in question,[359] and other Missouri courts have refused to notice records in other courts,[360] even when those records are incorporated into briefs.[361] This rule may be relaxed, however, depending on the facts and on whether expediency and justice require.[362] When another case is closely interwoven or interdependent,[363] or other appropriate circumstances exist, courts will consider the records of other

353. Sierk v. Reynolds, 484 S.W.2d 675, 682 (Mo. Ct. App. 1972). *See also* Estate of Kielhafner, 639 S.W.2d 115, 118 (Mo. Ct. App. 1982) (notice of "unseemly conflict" between two brothers who were coexecutors of an estate).

354. *See* State v. Berry, 609 S.W.2d 948, 955 (Mo. 1980) (en banc) (judicial notice of evidence in prior proceedings did not violate the defendant's constitutional rights); State v. Moore, 633 S.W.2d 140, 146 (Mo. Ct. App. 1982) (judicial notice of trial just completed to support finding of persistent or dangerous behavior); State v. Johnson, 605 S.W.2d 151, 155 (Mo. Ct. App. 1980) (judicial notice of trial to establish that defendant had been previously convicted of a violent felony).

355. *See* Schrader v. State, 561 S.W.2d 734, 735 (Mo. Ct. App. 1978) (notice of records reflecting what took place at hearing on guilty plea); *see also* State v. Keeble, 399 S.W.2d 118, 122 (Mo. 1966) (in determining whether defendant was afforded effective assistance of counsel, trial court properly took notice on motion to vacate judgment of the trial files and records).

356. State v. Moreland, 351 S.W.2d 33, 37 (Mo. 1961); State v. Cullett, 526 S.W.2d 920, 929 (Mo. Ct. App. 1975); Kansas City v. Mathis, 409 S.W.2d 280, 288 (Mo. Ct. App. 1966).

357. Knorp v. Thompson, 352 Mo. 44, 51, 175 S.W.2d 889, 893 (1943); *In re* Drew, 637 S.W.2d 772, 777-78 (Mo. Ct. App. 1982); State v. Drane, 581 S.W.2d 89, 92 (Mo. Ct. App. 1979); Haynes v. State, 534 S.W.2d 552, 555 (Mo. Ct. App. 1976); Layton v. State, 500 S.W.2d 267, 269 (Mo. Ct. App. 1973).

358. State v. Umfleet, 538 S.W.2d 55, 60 (Mo. Ct. App. 1976); Layton v. State, 500 S.W.2d 267, 269 (Mo. Ct. App. 1973).

359. *See* England v. Eckley, 330 S.W.2d 738, 743-44 (Mo. 1959) (en banc).

360. *See, e.g.,* Williams v. Williams, 497 S.W.2d 415, 417 (Mo. Ct. App. 1973) (circuit court of one county without authority to notice records and judgments of probate court in another county). *But see* MO. REV. STAT. § 483.660 (1978) (makes records of probate court records of the circuit court as of January 2, 1979).

361. Thompson v. State, 569 S.W.2d 380, 382-83 (Mo. Ct. App. 1978).

362. *In re* Drew, 637 S.W.2d 772, 778 (Mo. Ct. App. 1982); Drane v. State, 581 S.W.2d 89, 92-93 (Mo. Ct. App. 1979); Layton v. State, 500 S.W.2d 267, 269 (Mo. Ct. App. 1973).

363. Smitty's Super Mkts. v. Retail Store Employees Local 322, 637 S.W.2d 148, 151 (Mo. Ct. App. 1982); State v. Beavers, 591 S.W.2d 215, 218 (Mo. Ct. App. 1979); State v. Hawkins, 582 S.W.2d 333, 334 (Mo. Ct. App. 1979).

cases.[364]

When the same parties, basic facts, and general claims are involved, courts may notice records from other proceedings either on their own motion[365] or at the request of a party.[366] In ruling on a motion to vacate a judgment, a court may notice its own files and records in the related criminal proceeding,[367] and courts of appeals have noticed transcripts filed in a defendant's prior appeal to the supreme court in order to determine if the appeal raises new issues.[368] It is appropriate to notice the records of various criminal trials to substantiate claims of gender discrimination in jury selection.[369] Ordinarily, however, when the record in another case forms an essential element of a party's claim or defense, the record itself must be introduced in evidence unless admitted by the adversary.[370] In ruling on an attorney's application for fees earned in handling proceedings relating to the rehabilitation of an insurance company, the supreme court acknowledged its right to notice proceedings ancillary to the main cause, but concluded that where the services in question extended over several years and involved various duties, it was inappropriate to attempt to notice everything that formed the basis for the claim.[371]

III. Judicial Notice of Legislative Facts

A. *Generally*

In theory, legislative and adjudicative facts are quite different. Adjudicative facts are relevant to the resolution of a specific dispute,[372] while legis-

364. Knorp v. Thompson, 352 Mo. 44, 52, 175 S.W.2d 889, 894 (1943). *See also* Meiners Co. v. Clayton Greens Nursing Center, 645 S.W.2d 722, 724 (Mo. Ct. App. 1982); Layton v. State, 500 S.W. 267, 269 (Mo. Ct. App. 1973); *cf.* Mo. Rev. Stat. § 483.670 (1978) (records of magistrate court are records of circuit court).

365. *See* Schrader v. State, 561 S.W.2d 734, 735 (Mo. Ct. App. 1978).

366. Hardin v. Hardin, 512 S.W.2d 851, 854 (Mo. Ct. App. 1974). *See also* State v. Hawkins, 582 S.W.2d 333, 334 (Mo. Ct. App. 1979) (cases may be so closely interwoven or so clearly interdependent as to allow judicial notice in one suit of the proceedings in another).

367. State v. Stidham, 403 S.W.2d 616, 618 (Mo. 1966); State v. Keeble, 399 S.W.2d 118, 122 (Mo. 1966); State v. Connor, 500 S.W.2d 300, 304 (Mo. Ct. App. 1973).

368. Chambers v. State, 554 S.W.2d 112, 114 (Mo. Ct. App. 1977); Layton v. State, 500 S.W.2d 267, 269-70 (Mo. Ct. App. 1973).

369. State v. Hawkins, 582 S.W.2d 333, 334 (Mo. Ct. App. 1979).

370. State v. Cullen, 646 S.W.2d 850, 855 (Mo. Ct. App. 1983); Meiners Co. v. Clayton Greens Nursing Center, 645 S.W.2d 722, 724 (Mo. Ct. App. 1982); Richards Brick Co. v. Wright, 231 Mo. App. 946, 955, 82 S.W.2d 274, 279 (1935).

371. Scherfler v. Continental Life Ins. Co., 355 Mo. 886, 895-96, 169 S.W.2d 359, 365-66 (1943). *See also* Richard's Brick Co. v. Wright, 231 Mo. App. 946, 955, 82 S.W.2d 274, 279 (1935) (court refused to notice equitable mechanics lien pending in same court).

372. Fed. R. Evid. 201(c) advisory committee note.

lative facts explain social, economic, or political matters that a judge considers in making or interpreting law.[373] Legislative facts are almost always subject to dispute.[374] In jurisdictions where indisputability is a prerequisite to judicial notice of adjudicative facts, the line between adjudicative and legislative facts is relatively clear. When indisputability is not a prerequisite, as in Missouri, the distinction is vague.

Although Missouri courts do not distinguish between legislative and adjudicative facts, they have noticed a wide range of facts that might fairly be characterized as legislative. Neither the Missouri courts nor the federal rules have established procedures for judicial notice of legislative facts.[375] As Justice Holmes stated in *Chastleton Corp. v. Sinclair,*[376] "the court may ascertain as it sees fit any fact that is merely a ground for laying down a rule of law."[377] Professor Davis has suggested three methods that a court might employ to notice legislative facts: (1) allow presentation of evidence and cross-examination; (2) allow presentation of evidence but not cross-examination; or (3) deny any opportunity to comment.[378] Missouri courts generally follow the third approach.[379]

B. *Factual Basis of Legislation*

Judicial notice of legislative facts is most frequently taken in the course of reviewing the reasonableness of legislation. Parties challenging legislation under the equal protection clause cannot prevail on a claim that the clause is irrational if it is evident from all the considerations presented to the legislature and noticed by the court that the question is at least debatable.[380] Courts must make determinations about legislation not upon proof of facts or conditions, but on the theory that judicial notice provides proof of those things within the common knowledge and experience of all men.[381]

Notice has been taken that water fluoridation is controversial and therefore a city ordinance requiring fluoridation is legislative in nature and subject to a referendum.[382] It has been noticed that bus and other motor carrier operations frequently require temporary substitution or loans of ve-

373. Comment, *Judicial Notice,* 48 MISS. L.J. 919, 920 (1970). Some facts are legislative and adjudicative. *See, e.g.,* Ozbun v. Vance, 323 S.W.2d 771, 775-76 (Mo. 1959).

374. Comment, *supra* note 373, at 922.

375. *See* 2 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 12.6, at 424 (1979).

376. 264 U.S. 543 (1924).

377. *Id.* at 548.

378. 2 K. DAVIS, *supra* note 375, § 12.6, at 424.

379. *See* notes 380-401 *infra.*

380. Mid-State Distrib. v. City of Columbia, 617 S.W.2d 419, 424-25 (Mo. Ct. App. 1981).

381. ABC Liquidators v. City of Kan. City, 322 S.W.2d 876, 885 (Mo. 1959).

382. State *ex rel.* Whittington v. Strahm, 374 S.W.2d 127, 131-32 (Mo. 1963) (en banc).

hicles, and that protection of the public requires that insurance companies cover such vehicles even though they are not specifically described in the policy.[383] Similarly, it has been said to be common knowledge that food and shelter are among man's basic needs and are often provided by the same establishment; therefore, an ordinance prohibiting racial discrimination in such establishments was not an unconstitutional special law since it did not include other businesses.[384] It has been said that because the sale of goods at auction is ordinarily accompanied by noise and crowds, legislation prohibiting such sales on Sundays is not invalid.[385] In the course of upholding statutes requiring devices to protect workers, notice has been taken that the inhaling of fumes, dust, and gases used in the manufacture of paint will result in "painter's colic."[386] The courts have refused to notice the cause of combined sclerosis[387] and have refused to declare that as a matter of common knowledge pneumonia is an infectious disease intended to be excluded by the workers' compensation act.[388]

C. *Factual Basis of Rules of Law*

Courts frequently use commonly known facts as bases for rules of law. Because it is common knowledge that passengers in automobiles rely on drivers to exercise the highest degree of care, this reliance is not negligent.[389] The supreme court has held that an injurious quantity of carbon monoxide in a bus bespeaks negligence,[390] that the frequency of highway robberies makes it reasonable for truck drivers to carry guns,[391] and that it is not negligent to use waxes and cloths on floors in view of their common use for this purpose.[392] It has been noticed that practical methods exist for illuminating switchyards, so employers have a duty to provide such lighting.[393] Noticing that the acts of children are unpredictable, courts have held that greater precautions are necessary to fulfill the duty of care toward them.[394] Gender discrimination in jury selection has also been noticed.[395]

383. Davis v. Ashlock, 338 S.W.2d 816, 826 (Mo. 1960).
384. Marshall v. City of Kan. City, 355 S.W.2d 877, 884 (Mo. 1962) (en banc).
385. ABC Liquidators v. City of Kan. City, 322 S.W.2d 876, 884 (Mo. 1959).
386. Boll v. Condie-Bray Glass & Paint Co., 321 Mo. 92, 101, 11 S.W.2d 48, 52 (1928).
387. *See* Wolf v. Mallinckrodt Chem. Works, 336 Mo. 653, 656, 81 S.W.2d 323, 332 (1934).
388. *See* Rinehart v. F.M. Stamper Co., 55 S.W.2d 729, 731 (Mo. Ct. App. 1932).
389. Worley v. Tucker Nevils, Inc., 503 S.W.2d 417, 421 (Mo. 1973) (en banc); Fann v. Farmer, 289 S.W.2d 144, 148 (Mo. Ct. App. 1956).
390. Thomas v. Kansas City Pub. Serv. Co., 289 S.W.2d 141, 143 (Mo. Ct. App. 1956).
391. Arnold v. Wigdor Furniture Co., 281 S.W.2d 789, 793 (Mo. 1955).
392. Lawson v. Higgins, 350 Mo. 1066, 1068, 169 S.W.2d 881, 882-83 (1943).
393. Cleghorn v. Terminal R.R. Ass'n, 289 S.W.2d 13, 18 (Mo. 1956).
394. Harris v. Lane, 379 S.W.2d 635, 638 (Mo. Ct. App. 1964).

A variety of facts have been noticed in establishing rules of evidence. Based on notice that character evidence is distracting and confusing, the courts have prevented prosecutors from proving the bad character of the accused as part of the State's case in chief.[396] In 1895, it was said to be common knowledge that a poor reputation for chastity affected a woman's character but not a man's.[397] Twenty-two years later, however, the supreme court refused to notice that a citizen who is not quiet or law abiding is necessarily a perjurer.[398] Finally, based on the belief among lawyers that a jury's knowledge that the defendant is injured is prejudicial, the court has recognized that corrective instructions are insufficient to overcome the effect of improper references to insurance.[399]

The doctrine of res ipsa loquitor is based on the ability of the courts to notice that a particular accident would not have occured unless some party was negligent.[400] Common knowledge is not sufficient, however, for determining whether a doctor's acts or omissions are negligent.[401]

IV. Judicial Knowledge of Law

This section explores the legislative acts, judicial decisions, and other legal materials of which Missouri courts will inform themselves. Although obtaining knowledge of the law is perhaps more appropriately a subject for to rules of procedure,[402] Missouri courts speak of judicial notice of law and consider it a rule of evidence.[403] Unlike notice of adjudicative facts, however, notice of law is often required[404] and conclusive.[405]

Missouri courts take judicial notice of state law, including constitutional provisions,[406] statutes,[407] appellate decisions,[408] and general customs

395. State v. Hawkins, 582 S.W.2d 333, 334 (Mo. Ct. App. 1979).

396. *See* State v. Reed, 250 Mo. 379, 380, 157 S.W. 316, 318 (1913).

397. State v. Sibley, 131 Mo. 519, 531, 33 S.W. 167, 171 (1895).

398. State v. Baird, 271 Mo. 9, 16, 195 S.W. 1010, 1013 (1917).

399. Trent v. Lechtman Printing Co., 141 Mo. App. 437, 439, 126 S.W. 238, 243 (1910).

400. Anello v. Kansas City, 286 S.W.2d 49, 52-53 (Mo. Ct. App. 1955); Russell v. St. Louis & S.F. Ry., 245 S.W. 590, 591 (Mo. Ct. App. 1922).

401. *See* Mercer v. Thornton, 646 S.W.2d 375, 377 (Mo. Ct. App. 1983); Yoos v. Jewish Hosp., 645 S.W.2d 177, 183 (Mo. Ct. App. 1982).

402. Fed. R. Evid. 201 advisory committee note.

403. *See, e.g.,* Newson v. City of Kan. City, 606 S.W.2d 487, 490 (Mo. Ct. App. 1980). *But see* Damijan v. Harp, 340 S.W.2d 728, 734 (Mo. 1960) (the introduction into evidence of domestic statutes is improper).

404. *See* Mo. Bar C.L.E., *supra* note 1, § 7.12.

405. *See* Newson v. City of Kan. City, 606 S.W.2d 487, 490 (Mo. Ct. App. 1980).

406. State *ex rel.* State Highway Comm'n v. Allison, 296 S.W.2d 104, 106 (Mo. 1956) (en banc); Moulder v. Webb, 527 S.W.2d 417, 419 (Mo. Ct. App. 1975). *See* Carmody v. St. Louis Transit Co., 188 Mo. 572, 573, 87 S.W. 913, 914 (1905); State *ex rel.* Markwell v. Colt, 199 S.W.2d 412, 414 (Mo. Ct. App. 1947).

407. In 1893, the rule was that judicial notice of public statutes was required.

and usages.[409] Courts have a duty to notice these items,[410] even if not requested by the parties.[411] Notice has been taken of statutes governing the right to detain shoplifters,[412] definitions of crimes,[413] and the powers and duties of state agencies.[414] In 1909, judicial notice was taken that attorneys were required by statute to be at least twenty-one,[415] and in 1948 judicial notice was taken that segregation is common.[416] On occasion, notice has been taken that certain acts are not illegal or that laws do not require certain actions, including the absence of a legal obligation for children to support their parents.[417]

Missouri courts have judicially noticed public acts, even though only local in nature or impact,[418] and notice of many local actions is now re-

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See Bowen v. Missouri Pac. Ry., 118 Mo. 541, 544, 24 S.W. 436, 437 (1893); *see also* State *ex rel.* State Highway Comm'n v. Allison, 296 S.W.2d 104, 106 (Mo. 1956) (en banc); State v. Bubenyak, 56 S.W.2d 43, 44 (Mo. 1932); State *ex rel.* Ford v. Hogan, 324 Mo. 1130, 1138, 27 S.W.2d 21, 23 (1930); State *ex rel.* Gagnepain v. Daves, 322 Mo. 376, 384, 15 S.W.2d 815, 817 (1929) (en banc); State v. Harris, 564 S.W.2d 561, 567-68 (Mo. Ct. App. 1978); Moulder v. Webb, 527 S.W.2d 417, 419 (Mo. Ct. App. 1975); Ingalls v. Newfeld, 487 S.W.2d 52, 54 (Mo. Ct. App. 1972); MO. REV. STAT. § 3.090(2) (1978) (statute books are only prima facie evidence of the law).

408. *See* State v. Davis, 645 S.W.2d 6, 7 (Mo. Ct. App. 1982); Matthews v. McVay, 241 Mo. App., 998, 1006, 234 S.W.2d 983, 988 (1951).

409. *See* Frank v. Herring, 240 Mo. App. 425, 434, 208 S.W.2d 783, 788 (1948).

410. *See* Bowen v. Missouri Pac. Ry., 118 Mo. 541, 547, 24 S.W. 436, 437 (1893); Newson v. City of Kan. City, 606 S.W.2d 487, 490 (Mo. Ct. App. 1980); State v. Hutchens, 604 S.W.2d 26, 28 (Mo. Ct. App. 1980); Bly v. Skaggs Drug Centers, 562 S.W.2d 723, 726 (Mo. Ct. App. 1978); Moulder v. Webb, 527 S.W.2d 417, 419 (Mo. Ct. App. 1975).

411. State v. Kuhrts, 571 S.W.2d 709, 714 (Mo. Ct. App. 1978).

412. *See* Bly v. Skaggs Drug Centers, 562 S.W.2d 723, 726 (Mo. Ct. App. 1978).

413. *See, e.g.,* State v. Wickizer, 583 S.W.2d 519, 522 (Mo. 1979) (en banc) (definition of felony and the contents of MO. REV. STAT. § 560.161.2 (1969)); State v. Sales, 610 S.W.2d 652, 655 (Mo. Ct. App. 1982) (felonious assault without malice aforethought was a mixed felony and that felony by definition was an offense punishable by imprisonment in a penitentiary); State v. Hutchens, 604 S.W.2d 26, 28 (Mo. Ct. App.) (schedule of controlled substances), *cert. denied,* 449 U.S. 1020 (1980); State v. Gunn, 599 S.W.2d 787, 790 (Mo. Ct. App. 1980) (first degree robbery is a felony); State v. Mueller, 598 S.W.2d 564, 566 (Mo. Ct. App. 1980) (marijuana is a controlled substance).

414. *See, e.g.,* State *ex rel.* State Highway Comm'n v. Allison, 296 S.W.2d 104, 106 (Mo. 1956) (en banc) (highway commission); State *ex rel.* Mayfield v. City of Joplin, 485 S.W.2d 473, 476 (Mo. Ct. App. 1972) (statutes concerning selection, employment, and discharges in second class cities).

415. *See* State v. Gebhardt, 219 Mo. 708, 718, 119 S.W. 350, 352 (1909).

416. Frank v. Herring, 240 Mo. App. 425, 434, 208 S.W.2d 783, 788 (1948).

417. *See* Nichols v. State Social Sec. Comm'n, 156 S.W.2d 760, 763 (Mo. Ct. App. 1942).

418. *See, e.g.,* State *ex rel.* Moseley v. Lee, 319 Mo. 976, 994, 5 S.W.2d 83, 91 (1928).

quired by the constitution or by statute. The Missouri Constitution provides that notice shall be taken of city[419] and county charters,[420] and of plans to consolidate governmental functions of the city and county of St. Louis.[421] A statute[422] and the civil rules[423] require courts to notice private statutes if referred to the title of the statute and the place in the session laws or revised statutes where it can be found.[424]

Neither trial nor appellate courts may take judicial notice of city or county ordinances;[425] they must be proven like any other fact.[426] Unless an ordinance is admitted into evidence[427] or stipulated to,[428] the court does not know its terms;[429] prosecutions,[430] license revocations,[431] and other ac-

419. MO. CONST. art. VI, § 19. *See* State *ex rel.* Mayfield v. City of Joplin, 485 S.W.2d 473, 476 (Mo. Ct. App. 1972); State *ex rel.* Voss v. Davis, 418 S.W.2d 163, 172 (Mo. 1967); City of Hannibal v. Winchester, 391 S.W.2d 279, 286 (Mo. 1965) (en banc); Purdy v. Foreman, 547 S.W.2d 889, 891 (Mo. Ct. App. 1977); Schmitt v. City of Hazelwood, 487 S.W.2d 882, 886 (Mo. Ct. App. 1972); *see also* MO. CONST. art. VII, § 33 (requiring judicial notice of charter of the City of St. Louis).

420. MO. CONST. art. VI, § 18(j). *See* Laclede Gas Co. v. City of Woodson Terrace, 622 S.W.2d 315, 319 n.3 (Mo. Ct. App. 1981); Tonkin v. Jackson County Merit Sys. Comm'n, 599 S.W.2d, 25, 27 (Mo. Ct. App. 1980).

421. MO. CONST. art. VI, § 30(b).

422. MO. REV. STAT. § 509.220 (1978).

423. MO. SUP. CT. R. 55.21(a).

424. *See, e.g.,* Schmitt v. City of Hazelwood, 387 S.W.2d 882, 886 (Mo. Ct. App. 1972).

425. Consumer Contact Co. v. State Dep't of Revenue, 592 S.W.2d 782, 785 (Mo. 1980) (en banc). *See* General Motors v. Fair Employment Practices Div., 574 S.W.2d 394, 400 (Mo. 1978) (en banc); City of Lee's Summit v. Collins, 615 S.W.2d 592, 594 (Mo. Ct. App. 1981); City of Kan. City v. Mary Don Co., 606 S.W.2d 411, 414 (Mo. Ct. App. 1980); *see also* Tankin v. Jackson County Merit Sys. Comm'n, 599 S.W.2d 25, 30 (Mo. Ct. App. 1980) (administrative bodies cannot take judicial notice of ordinances).

426. *See* Schweig v. City of St. Louis, 569 S.W.2d 215, 225 n.6 (Mo. Ct. App. 1978); City of Perryville v. Boewer, 557 S.W.2d 457, 460 (Mo. Ct. App. 1977).

427. *See* Queen of Diamonds, Inc. v. Quinn, 569 S.W.2d 317, 319 (Mo. Ct. App. 1978). The ordinance must be pleaded either *in haec verba* or in substance. Schmitt v. City of Hazelwood, 487 S.W.2d 882, 886 (Mo. Ct. App. 1972). Parol evidence is insufficient. State *ex rel.* State Highway Comm'n v. Thelnon, Inc., 485 S.W.2d 443, 445 (Mo. Ct. App. 1972). Nor is it sufficient to refer to the ordinance by number only. General Motors v. Fair Employment Practices Div., 574 S.W.2d 394, 400 (Mo. 1978) (en banc).

428. *See* General Motors v. Fair Employment Practices Div., 574 S.W.2d 394, 400 (Mo. 1978) (en banc); City of St. Joseph v. Roller, 363 S.W.2d 609, 611 (Mo. 1963); State *ex rel.* Freeze v. City of Cape Girardeau, 523 S.W.2d 123, 127 (Mo. Ct. App. 1975).

429. *See* Consumer Contact Co. v. Missouri Dep't of Revenue, 592 S.W.2d 782, 785-86 (Mo. 1980) (en banc); *see also* State v. Furne, 642 S.W.2d 614, 616 (Mo. 1982) (en banc).

tions[432] premised on the ordinance will fail. Courts may, however, take notice of ordinances in municipal violations cases if a certified copy is filed with the judge's clerk.[433] Statutes also require judicial notice of extensions by ordinance of the city limits of a municipality,[434] the absorbtion of one municipality by another,[435] the incorporation of any city,[436] the change of name of a city, town, or incorporated village,[437] and of local census results.[438]

Notice has been taken of gubernatorial proclamations and messages,[439] of elections and results,[440] of attempts to enact legislation,[441] of legislative history contained in legislative journals,[442] and of the records of the General Assembly.[443]

Effective January 1, 1976, the courts shall "take judicial notice, with-

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430. *See, e.g.,* City of Riverside v. Weddle, 544 S.W.2d 328, 330 (Mo. Ct. App. 1976).

431. *See, e.g.,* Queen of Diamonds, Inc. v. Quinn, 569 S.W.2d 317, 319 (Mo. Ct. App. 1978).

432. *See, e.g.,* Consumer Contact Co. v. Missouri Dep't of Revenue, 592 S.W.2d 782, 786 (Mo. 1980) (en banc) (taxes); Dae v. City of St. Louis, 596 S.W.2d 454, 455 (Mo. Ct. App. 1980) (action to enjoin enforcement of ordinances).

433. *See* City of Lee's Summit v. Lawson, 612 S.W.2d 65, 67 (Mo. Ct. App. 1981); MO. REV. STAT. § 479.250 (1978).

434. *See* MO. REV. STAT. § 71.012 (1978) (any city except those bordering first class counties with a population over 900,00); *id.* § 71.920 (cities and villages in first class counties); *id.* § 81.080 (cities of 20,000 or less); *id.* § 81.200 (cities of 20,000 to 250,000); *id.* § 82.090 (constitutional charter cities).

435. *See id.* § 72.350.

436. *See id.* § 77.010 (third class cities); *id.* § 79.010 (fourth class cities); *see also* Shelby County R-IV School Dist. v. Herman, 392 S.W.2d 609, 612 (Mo. 1965); MO. REV. STAT. §§ 74.013, 75.010 (1978) (repealing provisions for judicial notice of incorporation of cities of the first and second classes).

437. MO. REV. STAT. § 71.070 (1978).

438. *See id.* § 81.030.2.; *see also id.* § 490.700.

439. State v. Tippett, 317 Mo. 319, 329, 296 S.W. 132, 136 (1927); Lauck v. Reis, 310 Mo. 184, 197-98, 274 S.W. 827, 831 (1925).

440. *See* Buchanan v. Kirkpatrick, 615 S.W.2d 6, 8-9 (Mo. 1981) (en banc); *see also* Preisler v. Doherty, 365 Mo. 460, 465, 284 S.W.2d 427, 437 (1955) (en banc) (senators from St. Louis had been elected and seated); State *ex rel.* McKittrick v. Graves, 346 Mo. 990, 993, 144 S.W.2d 91, 96 (1940) (en banc) (numerous federal and state officers elected in 1936).

441. *See* Estate of Osterluh v. Carpenter, 337 S.W.2d 942, 946 (Mo. 1960); Estate of Gerling, 303 S.W.2d 915, 920 (Mo. 1957); Beal v. Industrial Comm'n, 535 S.W.2d 450, 458 (Mo. Ct. App. 1975).

442. *See* Brown v. Morris, 365 Mo. 946, 957, 290 S.W.2d 160, 167-68 (1956) (en banc); *see also* Kansas City S. Ry. v. Garvey, 592 S.W.2d 703, 706 (Mo. 1979) (en banc) (reasons for enactment reflected in emergency clause of bill).

443. *See* State *ex rel.* Snip v. Thatch, 355 Mo. 75, 78, 195 S.W.2d 106, 107 (1946).

out proof, of the contents of the code of state regulations,"[444] even if the regulations have been modified or repealed.[445] Prior to this statute, the courts could not take judicial notice of the rules of state[446] or municipal administrative agencies,[447] and the law still requires that a court reviewing an administrative decision cannot take judicial notice of rules or regulations not included in the Code of State Regulations.[448] An agency can notice its own rules,[449] however, and the agency's official record of the rule would render it part of an appeal.[450] Agencies also are required to take official notice of all matters of which the courts take judicial notice, and they may take official notice of technical or scientific facts not judicially noticeable if the parties are given an opportunity to be heard.[451]

Missouri courts are required to notice the common law and statutes of every state, territory and other United States jurisdiction[452] if reasonable notice is given to the parties.[453] Rule 55.21(b) of the Missouri Rules of Civil Procedure imposes a similar requirement when facts are alleged to show that such law may be applicable.[454] The statute and the rule provide

444. MO. REV. STAT. § 536.031.5 (1978). *See* State *ex rel.* Ashcroft v. Whipple, 647 S.W.2d 595, 596-97 n.5 (Mo. Ct. App. 1983); Willhite v. Marlow Adjustment, Inc., 623 S.W.2d 254, 261 n.5 (Mo. Ct. App. 1981); State v. Malveaux, 604 S.W.2d 728, 732 (Mo. Ct. App. 1980); State v. Crowell, 560 S.W.2d 889, 891 (Mo. Ct. App. 1978).

445. State v. Malveaux, 604 S.W.2d 728, 732-33 (Mo. Ct. App. 1980).

446. *See* Kersey v. Harbin, 531 S.W.2d 76, 80 (Mo. Ct. App. 1975); Allen v. State Dept. of Pub. Health & Welfare, 479 S.W.2d 183, 187 (Mo. Ct. App. 1972); State v. Sinclair, 474 S.W.2d 865, 868 (Mo. Ct. App. 1971); Silas v. ACF Indus., 440 S.W.2d 189, 192 (Mo. Ct. App. 1969); Missouri Dental Bd. v. Riney, 429 S.W.2d 803, 806 (Mo. Ct. App. 1968). These cases were decided before § 536.031.5 took effect.

447. Abbott v. Civil Serv. Comm'n, 546 S.W.2d 36, 37 (Mo. Ct. App. 1976) (St. Louis civil service rules).

448. Prokopf v. Whaley, 592 S.W.2d 819, 823 (Mo. 1980) (en banc) (St. Louis public commissioners' rules). *See also* Myers v. Moreno, 564 S.W.2d 83, 87 n.2 (Mo. Ct. App. 1978).

449. Prokopf v. Whaley, 592 S.W.2d 819, 823 (Mo. 1980) (en banc). *See also* Consumer Contact Co. v. Missouri Dep't of Revenue, 592 S.W.2d 782, 786 (Mo. 1980) (en banc).

450. Prokopf v. Whaley, 592 S.W.2d 819, 823 (Mo. 1980) (en banc).

451. MO. REV. STAT. § 536.070(6) (1978).

452. *See id.* §§ 490.070-.120 (Uniform Judicial Notice of Foreign Law Act).

453. *Id.* § 490.110. *See* McCain v. Sieloff Packing Co., 246 S.W.2d 736, 738 (Mo. 1952); Cohen v. Ozark Airlines, 623 S.W.2d 84, 86 (Mo. Ct. App. 1981); Ellsworth v. Worthey, 612 S.W.2d 396, 400 (Mo. Ct. App. 1981); *In re* Marriage of Bradford, 557 S.W.2d 720, 726 (Mo. Ct. App. 1977); Conley v. Berberich, 300 S.W.2d 844, 848 (Mo. Ct. App. 1957); *see also* MO. SUP. CT. R. 55.21(b); *see generally* Comment, *Judicial Notice of Foreign Law As Developed in Missouri Tort Law,* 25 MO. L. REV. 176 (1960).

454. *See* Perry v. Carter, 620 S.W.2d 50, 52 (Mo. Ct. App. 1981) (citing MO.

that the court may inform itself of such laws in any manner as it may deem proper and it may call upon counsel for aid.[455]

Missouri courts take judicial notice of the Constitution and laws of the United States[456] including executive orders,[457] presidential proclamations[458] and statutes.[459] Regulations promulgated by federal agencies have the force and effect of law, and Missouri courts will judicially notice them.[460] Notice has been taken of the rules of the Interstate Commerce Commission,[461] the Federal Aviation Administration,[462] the Federal Emergency Price Control Act,[463] and Federal Housing Administration interest rates.[464] Rules promulgated by the Civil Aeronautics Board should, in the discretion of the trial court, be judicially noticed,[465] and notice has always been taken of official census records.[466] Missouri courts will also notice de-

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SUP. CT. R. 55.21 and Valleroy v. Southern Ry., 403 S.W.2d 553, 555, 557 (Mo. 1966)); *see, e.g., In re* Marriage of Bradford, 557 S.W.2d 720, 726 (Mo. Ct. App. 1977); *see also* Robinson v. Gaines, 331 S.W.2d 653, 655 (Mo. 1960); MO. REV. STAT. § 509.220 (1978).

455. *See* MO. REV. STAT. § 490.090 (1978); MO. SUP. CT. R. 55.21(b); *see also* MO. REV. STAT. §§ 490.020-.030 (1978) (copies of other states' laws may be received as prima facie evidence); *id.* § 490.060 (reporters of decisions).

456. Wentz v. Chicago B. & Q.R.R., 259 Mo. 450, 453, 168 S.W. 1166, 1170 (1914). *See, e.g.,* Perbert v. Repple, 342 Mo. 274, 280, 114 S.W.2d 999, 1002 (1938); Hall v. Buchner, 240 Mo. App. 1239, 1244, 227 S.W.2d 96, 98 (1950). MO. REV. STAT. §§ 490.070-.120 (1978) (discussed at note 452 and accompanying text *supra*) probably do not apply to laws of the United States. *See id.* § 490.120; *see also id.* §§ 490.040-.050 (proof of laws of the United States).

457. *In re* Estate of DeGheest, 360 Mo. 1002, 1009, 232 S.W.2d 378, 381 (1950).

458. State v. Stoner, 395 S.W.2d 192, 193 (Mo. 1965) (November 25, 1963 proclaimed a national day of mourning).

459. *See, e.g.,* Hall v. Bucher, 227 S.W.2d 96, 98 (Mo. Ct. App. 1950) (Emergency Price Control Act).

460. Macalco, Inc. v. Gulf Ins. Co., 550 S.W.2d 883, 887 (Mo. Ct. App. 1977); Fredrick v. Bensen Aircraft Corp., 436 S.W.2d 765, 769-70 (Mo. Ct. App. 1968). Notice of regulations published in the Federal Register is required by federal law. *See* 44 U.S.C. § 1507 (1976). In Allen v. State Dep't of Pub. Health & Welfare, 479 S.W.2d 183 (Mo. Ct. App. 1972), the court expressed doubt that § 1507 extends to state courts but declined to finally decide the issue because the matters sought to be noticed were not cited to the Federal Register. *Id.* at 186.

461. Depass v. B. Harris Wool Co., 356 Mo. 1038, 1041, 144 S.W.2d 146, 147 (1940) (en banc).

462. Insurance Co. of Pa. v. West Plains Air, 637 S.W.2d 444, 446 (Mo. Ct. App. 1982). *See also* Frederick v. Benson Aircraft Corp., 436 S.W.2d 765, 769 (Mo. Ct. App. 1968).

463. Hall v. Bucher, 240 Mo. App. 1239, 1242-43, 227 S.W.2d 96, 98 (1950).

464. Gershman Inv. Corp. v. Danforth, 475 S.W.2d 36, 37-38 (Mo. 1971) (en banc).

465. Hough v. Rapidair, Inc., 298 S.W.2d 378, 383 (Mo. 1957).

466. *See* MO. REV. STAT. § 490.700 (1978) (requires judicial notice of state and federal census results); *see, e.g.* Varble v. Whitecotton, 354 Mo. 570, 575, 190 S.W.2d

cisions of federal administrative law judges.[467]

Missouri courts will not take judicial notice of the law of foreign countries.[468]

V. CONCLUSION

Thousands of Missouri cases have taken judicial notice of a wide variety of facts, but the trend is to contract the list of things noticeable. Most recent decisions are concerned with the question of what records a court may notice. Many others deal with geographical facts, often in the context of venue. Only a few deal with other types of adjudicative facts. Many noticed facts are not controversial, and thus no references to them appear in the appellate cases. Often judicial notice seems to result from a reluctance to take action which would be required without proof of the disputed fact, such as overturning a jury verdict.

The apparent decrease in new facts noticed by Missouri courts may indicate a tendency to notice only adjudicative facts that are clearly common knowledge or readily ascertainable by reference to authoritative sources. Despite statements that judicial notice must be exercised cautiously and confined to facts that are notorious,[469] Missouri courts have expanded common knowledge to include a variety of facts that are not very well known. For example, the average person's walking speed in feet per second has been said to be common knowledge.[470]

Noticing facts not commonly known but capable of verification promotes accuracy and expediency, both goals of a system of judicial notice.[471] The problem in noticing disputable facts is the degree of certainty required before notice may be taken. While the cases do not specifically answer this question, a fair reading may be that notice is proper if a fact is sufficiently

244, 246 (1945) (en banc); Wilson v. City of Waynesville, 615 S.W.2d 640, 645 (Mo. Ct. App. 1981); *see also* State *ex rel.* Kopper Kettle Restaurants v. City of St. Robert, 424 S.W.2d 73, 79 (Mo. Ct. App. 1968); Kirst v. Clarkson Constr. Co., 395 S.W.2d 487, 497-98 (Mo. Ct. App. 1965).

467. Smitty's Super Mkts. v. Retail Store Employees Local 322, 637 S.W.2d 148, 151 (Mo. Ct. App. 1982). *But see* City of St. Louis v. Niehaus, 236 Mo. 8, 15, 139 S.W. 450, 452 (1911) (court would not notice United States Department of Agriculture milk standards); *cf.* Kawin v. Chrysler Corp., 636 S.W.2d 40, 43-44 (Mo. 1982) (en banc) (FTC regulations refused noticed on relevancy grounds).

468. Lane v. St. Louis Union Trust Co., 356 Mo. 76, 82, 201 S.W.2d 288, 291 (1947) (court applied Missouri law in absence of proof of German law); Scott v. Vincennes Bridge Co., 220 Mo. App. 1213, 1217, 299 S.W. 145, 146 (1927). Sections 490.070-.120 do not cover judicial notice of foreign law. Compare FED. R. CIV. P. 44.1, which allows federal courts to determine foreign law by reference to any relevant source, including testimony. *See generally Second Annual Sokol Colloquium on Private International Law,* 18 VA. J. INT'L L. 609 (1978).

469. English v. Old Am. Ins. Co., 426 S.W.2d 33, 41 (Mo. 1968).

470. *See, e.g.,* State v. Burley, 523 S.W.2d 575, 579 (Mo. Ct. App. 1975).

471. Note, *supra* note 2 at 724, nn.8 & 9.

likely to be true that it is in the interests of justice to notice it. Because the Missouri approach to judicial notice offers an opportunity to rebut, it eliminates most problems of inaccuracy while promoting expediency, and provides greater assurance than Rule 201 that a deserving litigant will not lose because his attorney failed to produce admissible evidence of a relevant fact.