

## PART II

### On Proof

## Chapter VII

### FACTS WHICH NEED NOT BE PROVED

**111. Fact judicially noticeable need not be proved.**--No fact of which the Court will take judicial notice need be proved.

#### COMMENTS

Part I dealt with what facts may, and what facts may not, be proved in a civil or criminal case. Part II deals with the question what sort of evidence must be given of a fact which may be proved. This part shows the manner in which a fact-in-issue or relevant fact must be proved.

All facts-in-issue and relevant facts must be proved by evidence, either oral or documentary. To this rule there are two exceptions :

- (a) facts judicially noticeable; and
- (b) facts admitted.

In the case of the facts dealt with by this Article, the Judge's belief in their existence is induced by the general knowledge acquired otherwise than in particular proceedings before the Court and independently of the action of the parties therein. The meaning of the Article will, however, be apparent, if we consider together with this Article the last words of Article 112. What these two provisions really come to is this : With regard to the facts enumerated in Article 112, if their existence comes into question, the parties who assert their existence, on the contrary, need not in the first instance produce any evidence, in support of their assertions. They need only ask the Judge to say whether these facts exist or not, and if Judge's own knowledge will not help him, then he must look the matter up; further, the Judge can, if he thinks proper, call upon the parties to assist him. But in making this investigation the Judge is emancipated entirely from all the rules of evidence laid down for the investigation of facts in general. He may resort to any source of information which he finds handy and which he thinks will help him. Thus, he may consult any book or obtain information from a bystander.

**Scope.**--The Court may take judicial notice of the ever increasing inflation in the country. In this case judicial notice was taken of the fact that Rs. 60,000 invested in 1972 were worth much more rather many times more in 1986.<sup>1</sup>

**'Take judicial notice.'**--This expression means recognition without proof of something as existing or as being true.<sup>2</sup> Judicial notice is based upon very obvious reasons of convenience and expediency; and the wisdom of dispensing with proof of

1. PLJ 1986 Kar. 148 = PLD 1986 Kar. 16 = NLR 1986 Civ. 388 + NLR 1986 SD 356.

2. For example, the Court taking judicial notice that the law and other situation has deteriorated over the years and continues to be worsening fast and, therefore, it is an importune time to think of reconsidering death penalty. AIR 1992 SC 395; 1992 Cr. LJ 514.

emancipated entirely from all the rules of evidence laid down for the investigation of facts in general. He may resort to any source of information which he finds handy, which he thinks helps him. Thus, he might consult any book or obtain information from a bystander. Where there is a jury, not only the Judge, but the jury also, must be informed as to existence or non-existence of any fact in question. In the cases mentioned in Article 112, therefore, the Judge must not only inform himself but he must communicate his information to the jury.<sup>12</sup> and when he relies on any document or book of reference under this section, he should also inform the parties during the trial and so give them a chance to contradict its authority.<sup>13</sup>

**112. Facts of which Court must take judicial notice.--(1)**  
The Court shall take judicial notice of the following facts :--

- (a) All-Pakistan laws;
- (b) Articles of War for the Armed Forces;
- (c) The course of proceeding of the Central Legislature and any Legislature established under any law for the time being in force in Pakistan;
- (d) The seals of all the Courts in Pakistan and of all Courts out of Pakistan established by the authority of the Federal Government or the Government representative, the seals of Court of Admiralty and Maritime jurisdiction and of Notaries Public and all seals which any person is authorised to use by any Act or Regulation having the force of law in Pakistan;
- (e) The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in Pakistan, if the fact of their appointment to such office is notified in the official Gazette;
- (f) The existence, title and national flag of every State or Sovereign recognised by the Federal Government ;
- (g) The divisions of time, the geographical divisions of the world, and public festivals, facts and holidays notified in the official Gazette;
- (h) The territories under the dominion of Pakistan;
- (i) The commencement, continuance and termination of hostilities between Pakistan any other State or body of persons;

12. Markby's Evidence Act. s. 40 see generally as to Judicial Notice, Wharton, Ev., S. 276-340.

13. 40 C. 898, 23 IC 25 : 18 CWN 185, per Woodroff, J. ; (1910) 38 C. 153.

Art. 112]

(j) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants and also of all officers acting in execution of its process, and of all advocates and other persons authorized by law to appear or act before it;

(k) The rule of the road on land or at sea.

(2) In all cases referred to in clause (1), and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

(3) If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

### COMMENTS

**Scope.**--By the very nature of things, the list of matters enumerated in Article 112, of which Courts can take judicial notice cannot be exhaustive, because a Judge is entitled to use his own knowledge of general or public facts, historical, scientific, political or otherwise.<sup>1</sup> He is entitled to take judicial notice of matters which have reached the Courts, e.g., prosecutions for political crimes or the general trend of evidence adduced for the prosecution and defence in such cases. He is also entitled to take judicial notice of proceedings in the Assembly, but not of the truth of the facts asserted in the speeches, but of the fact that such speeches were made.<sup>2</sup> But he cannot take judicial notice of diaries maintained by a person when they were not one of those documents which are enumerated in that Article.<sup>3</sup>

**Judicial notice. Public holidays.**--Reasons advanced by a party for not getting the document drafted by deed writers was that on the day when the document was scribed, it was Sunday and the deed writers were not available. Effect. From the calendar of the relevant year, the Trial Court had taken a judicial notice that it was neither Sunday nor a national or local holiday. Justification for not getting the document drafted by licensed deed writer who could have incorporated the agreement in his official register had been repelled in circumstances.<sup>4</sup>

**Judicial notice.**--Judgments of Supreme Court. Judicial notice could be taken thereof.<sup>5</sup>

**Judicial notice.**--The list of facts of which the Court shall take judicial notice and which are enumerated in this Article is not exhaustive. It is for the sake of

1. 37 Cal. 760 (DB).  
 2. AIR 1947 Nag. 1 = ILR 1946 Nag. 865 = 47 Cr. LJ 994 (SB).  
 3. PLD 1972 Kar. 459 (DB).  
 4. 2003 YLR 889 (a).  
 5. 2006 MLD 810 (d).

Art. 113]

**Practice of Court.**--A Court can take judicial notice of the practice of Courts in certain matters. Thus, where there is a practice in a Court of Small Causes not to insist on the filing of a copy of the decree with the memorandum of appeal, the Court can take judicial notice of that practice and extend time for filing of such copy where it finds that the copy should have been filed but was not filed.<sup>1</sup>

**Extensive smuggling in country.**--The Court may take judicial notice of the fact that about the time when an incident occurred a number of prosecutions had been launched at the instance of the anti-smuggling police in respect of gold bars seized from private possession.<sup>2</sup>

**Khairf crop, commencement of.**--Judicial notice may be taken of the fact that Kharif crop commences in N.-W.F.P. in the month of June-July.<sup>3</sup>

**113. Facts admitted need not be proved.**--No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

#### COMMENTS

**Principle.**--No proof need be given of facts which the parties or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by writing under their hands, or which, by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted. The Court may in its discretion require any fact so admitted to be proved otherwise than by such admission. (*O. VIII, r. 3, Civil Procedure Code*). Where a document is not admitted in the pleadings but only at the trial in evidence, the document must be proved.<sup>4</sup>

Where at the initial stage of eviction proceedings, execution of agreement of tenancy showing the other party as landlord, owner was admitted by the tenant, he subsequently could not take the plea that the agreement was obtained by fraud.<sup>5</sup>

Execution of each and every document must be proved unless same was admitted under Article 113, presumed under Article 102, Qanun-e-Shahadat or some other provisions of law. Ordinarily, document would not prove itself. Questioned

1. AIR 1955 NUC (Cal.) 2919.
2. PLD 1959 Kar. 648 (DB).
3. PLJ 1984 Pesh. 69.
4. (1923) 1 Ran. 472.
5. AIR 1994 Delhi 209.