Appendix B (040616)

ARTICLE II—JUDICIAL NOTICE

Sec. 2-1. Judicial Notice of Adjudicative Facts

(a) Scope of section. This section governs only judicial notice of adjudicative facts.

(b) Taking of judicial notice. A court may, but is not required to, take notice of matters of fact, in accordance with subsection (c).

(c) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) within the knowledge of people generally in the ordinary course of human experience, or (2) generally accepted as true and capable of ready and unquestionable demonstration.

(d) Time of taking judicial notice. Judicial notice may be taken at any stage of the proceeding.

(Amended June 29, 2007, to take effect Jan. 1, 2008)

COMMENTARY

(a) Scope of section.

Section 2-1 addresses the principle of judicial notice, which relieves a party from producing formal evidence to prove a fact. E.g., *Beardsley* v. *Irving*, 81 Conn. 489, 491, 71 A. 580 (1909); *Federal Deposit Ins. Corp.* v. *Napert-Boyer Partnership*, 40 Conn. App. 434, 441, 671 A.2d 1303 (1996). Section 2-1 deals only with judicial notice of "adjudicative" facts. Adjudicative facts are the facts of a particular case or those facts that relate to the activities or events giving rise to the particular controversy. See *Moore* v. *Moore*, 173 Conn. 120, 122, 376 A.2d 1085 (1977); K. Davis, "Judicial Notice," 55 Colum. L. Rev. 945, 952 (1955).

This section does not deal with judicial notice of "legislative" facts, i.e., facts that do not necessarily concern the parties in a particular case but that courts consider in determining the constitutionality or interpretation of statutes or issues of public policy upon which the application of a common-law rule depends. See *Moore* v. *Moore*, supra, 173 Conn. 122; K. Davis, supra, 55 Colum. L. Rev. 952. The Code leaves judicial notice of legislative facts to common law.

(b) Taking of judicial notice.

Subsection (b) expresses the common-law view that "[c]ourts are not bound to take judicial notice of matters of fact." *DeLuca* v. *Park Commissioners*, 94 Conn. 7, 10, 107 A. 611 (1919).

(c) Kinds of facts.

Subsection (c) is consistent with common-law principles of judicial notice. See, e.g., *West Hartford* v. *Freedom of Information Commission*, 218 Conn. 256, 264, 588 A.2d 1368 (1991); *State* v. *Tomanelli*, 153 Conn. 365, 369, 216 A.2d 625 (1966).

Both the fact that raw pork must be cooked thoroughly to kill parasites; see *Silverman* v. *Swift & Co.*, 141 Conn. 450, 458, 107 A.2d 277 (1954); and the fact that the normal period of human gestation is nine months; *Melanson* v. *Rogers*, 38 Conn. Sup. 484, 490–91, 451 A.2d 825 (1982); constitute examples of facts subject to judicial notice under category (1). Examples of category (2) facts include: scientific tests or principles; *State* v. *Tomanelli*, supra, 153 Conn. 370–71; geographical data; e.g., *Nesko Corp.* v. *Fontaine*, 19 Conn. Sup. 160, 162, 110 A.2d 631 (1954); historical facts; *Gannon* v. *Gannon*, 130 Conn. 449, 452, 35 A.2d 204 (1943); and times and dates. E.g., *Patterson* v. *Dempsey*, 152 Conn. 431, 435, 207 A.2d 739 (1965).

Within category (2), the court may take judicial notice of the existence, content and legal effect of a court file, or of a specific entry in a court file if that specific entry is brought to the attention of the court, subject to the provisions of Section 2-2. Judicial notice of a court file or a specific entry in a court file does not establish the truth of any fact stated in that court file. The rules governing hearsay and its exceptions determine the admissibility of court records for the truth of their content. See *Fox* v. *Schaeffer*, 131 Conn. 439, 447, 41 A.2d 46 (1944); see also *O'Connor* v. *Larocque*, 302 Conn. 562, 568 n.6, 31 A.3d 1 (2011).

(d) Time of taking judicial notice.

Subsection (d) adheres to common-law principles. *Drabik* v. *East Lyme*, 234 Conn. 390, 398, 662 A.2d 118 (1995); *State* v. *Allen*, 205 Conn. 370, 382, 533 A.2d 559

(1987). [Because t] The Code [is intended to govern the admissibility of evidence in the court, subsection (d)] does not govern the taking of judicial notice on appeal.

[(e) Instructing jury (provision deleted)

The 2000 edition of the Code contained a subsection (e), which provided:

"(e) Instructing jury. The court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed." The commentary contained the following text:

"(e) Instructing jury.

"In accordance with common law, whether the case is civil or criminal, the court shall instruct the jury that it may, but need not, accept the judicially noticed fact as conclusive. See, e.g., *State* v. *Tomanelli*, supra, 153 Conn. 369; cf. Fed. R. Evid. 201 (g). Because the jury need not accept the fact as conclusive, other parties may offer evidence in disproof of a fact judicially noticed. *State* v. *Tomanelli*, supra, 369; *Federal Deposit Ins. Corp.* v. *Napert-Boyer Partnership*, supra, 40 Conn. App. 441." This subsection was deleted with the recognition that the Code is not the appropriate repository for jury instructions.]

Sec. 2-2. Notice and Opportunity To Be Heard

(a) Request of party. A party requesting the court to take judicial notice of a fact shall give timely notice of the request to all other parties. Before the court determines whether to take the requested judicial notice, any party shall have an opportunity to be heard.

(b) Court's initiative. The court may take judicial notice without a request of a party to do so. Parties are entitled to receive notice and have an opportunity to be heard for matters susceptible of explanation or contradiction, but not for matters of established fact, the accuracy of which cannot be questioned.

COMMENTARY

(a) Request of party.

Subsection (a) states what appeared to be the preferred practice at common law. *Drabik* v. *East Lyme*, 234 Conn. 390, 398, 662 A.2d 118 (1995); *State ex rel. Capurso* v. *Flis*, 144 Conn. 473, 477–78, 133 A.2d 901 (1957); *Nichols* v. *Nichols*, 126 Conn. 614,

622, 13 A.2d 591 (1940).

(b) Court's initiative.

The first sentence is consistent with existing Connecticut law. E.g., *Connecticut Bank & Trust Co.* v. *Rivkin*, 150 Conn. 618, 622, 192 A.2d 539 (1963). The dichotomous rule in the second sentence represents the common-law view as expressed in *Moore* v. *Moore*, 173 Conn. 120, 121–22, 376 A.2d 1085 (1977). Although the court in *Moore* suggested that "it may be the better practice to give parties an opportunity to be heard" on the propriety of taking judicial notice of accurate and established facts; id., 122; it did not so require. Accord *Guerriero* v. *Galasso*, 144 Conn. 600, 605, 136 A.2d 497 (1957).