

**FOR THE RECORD:
EXPLORING JUDICIAL NOTICE ON APPEAL**

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I. Introduction

The purpose of this paper is to serve as a quick reference guide to some of the many Texas cases addressing judicial notice on appeal. While Article II of the Texas Rules of Evidence (Rules 201-204) ostensibly governs judicial notice of adjudicative facts and some types of law at both the trial and appellate levels, *see* TEX. R. EVID. 201(f), 202 (judicial notice may be taken at “any stage of the proceeding”), no rule expressly governs judicial notice of other kinds of facts or law, either at trial or on appeal. With appellate courts’ increasing comfort using and citing the internet,¹ and the exponential increase in legal, scientific, and other specialized materials that are no longer hidden away in the depths of government archives or the back of university library stacks, it may be helpful to review the principles of judicial notice, and the

¹ *See* Barger, *On the Internet, Nobody Knows You’re a Judge: Appellate Courts’ Use of Internet Materials*, 4 J. APP. PRAC. & PROCESS 471 (2002). Among other things, Barger’s research included searching federal appellate opinions in Westlaw for the term “http.” She found 361 distinct citations to web sites by federal appellate courts in their opinions from 1996 to 2001. The same search run in the Texas cases Westlaw database turned up 170 opinions, dating back to 1998 and citing the gamut of internet resources, including state, federal, and county government web sites, online dictionaries and encyclopedias, the Physicians Desk Reference and other medical web sites, car reviews, Sierra club newsletters, industry glossaries, census data, perpetual calendar web sites, newspapers, interest group web sites, to Salon, Wired, and the PBS News Hour online editions.

way appellate courts look to material outside the record to help them decide cases.²

A. What is Judicial Notice?

Professor Wellborn has explained that the broadest definition of judicial notice includes any use of information by a court without formal evidentiary proof. Wellborn, *Judicial Notice under Article II of the Texas Rules of Evidence*, 19 ST. MARY’S L.J. 1, 2 (1986). This includes judicial determinations of law as well as fact. *Id.*

1. Judicial Notice of Facts

Judicial notice of facts is traditionally divided into three categories: adjudicative facts, legislative facts, and other nonadjudicative facts used as part of the judicial reasoning process (also known as “reasoning” facts). *Id*; *see also* Davis, *An Approach to Problems of Evidence in the Administrative Process*, 55 HARV. L. REV. 364, 402 (1942).

Adjudicative facts are those specific to a case that would typically be decided by the trier of fact—the who did what, where, when, how, and with what motive or intent. FED. R. EVID. 201 advisory committee’s note. Judicial notice of adjudicative facts promotes judicial efficiency by dispensing with formal proof of facts that are not subject to reasonable dispute because they are either: (1) generally known in the territorial jurisdiction of the trial court; or (2) are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *See* TEX. R. EVID. 201(b); Larkin, *Texas Rules of Evidence Handbook: Judicial Notice*, 30 HOUS. L. REV. 193, 197 (1993). Only adjudicative facts are subject to the notice and procedural requirements of Rule 201. TEX. R. EVID. 201(a).

² For additional discussion of appellate courts’ use of extra-record material *see* *See, Written in Stone? The Record on Appeal and the Decision-Making Process*, 40 GONZ. L. REV. 157, 190-97 (2004-05); Margolis, *Beyond Brandeis: Exploring the Uses of Non-Legal Materials in Appellate Briefs*, 34 U.S.F. L. REV. 197 (2000).

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Legislative facts, by contrast, are general facts that relate to the law and public policy, and help the court determine the content of the law and how to apply the law to the facts before it. Larkin, *supra*, at 197. They are not typically the object of evidentiary proof, and “judicial notice of legislative facts is ordinarily limited only by the court’s own sense of propriety.” *Id.* at 198. As one commentator has explained:

In determining the content or applicability of a rule of domestic law, the judge is unrestricted in his investigation and conclusion. He may reject the propositions of either party or of both parties. He may consult the sources of pertinent data to which they refer, or he may refuse to do so. He may make an independent search for persuasive data or rest content with what he has or what the parties present. . . . [T]he parties do no more than to assist; they control no part of the process.

FED. R. EVID. 201 advisory committee’s note (quoting Morgan, *Judicial Notice*, 57 HARV. L. REV. 269, 270-71 (1944)). Judicial notice of legislative facts is not limited by indisputability or any of the other provisions of Rule 201. Wellborn, *supra*, at 12.

Nonadjudicative (Reasoning) facts are those very basic facts within common knowledge about human affairs, the meaning of words, and the environment. *Id.* at 12-13. These are the kinds of facts that are imputed to judges and jurors as part of their ““necessary mental outfit,”” and which cannot, because of their multiplicity and fundamental nature are not appropriate for formal judicial notice. Larkin, *supra*, at 201-02 (quoting THAYER, A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW 280 (1898)). An example might be the observation by the Seventh Court of Appeals, in determining that a cowboy could not recover from ranch for injuries suffered after being thrown from a horse: “We believe it is common knowledge that young horses with high spirit are

sometimes prone to pitch when first saddled on cool mornings.”) *Ramsey v. Coldwater Cattle Co.*, 403 S.W.2d 196, 204 (Tex. App.—Amarillo 1966, writ *dism’d*).

2. Judicial Notice of Law

Article II of the Texas Rules of Evidence contains three rules governing judicial notice of law: Rule 202 on the law of other states and jurisdictions, Rule 203 on the law of foreign countries, and Rule 204 on Texas ordinances, the contents of the Texas Register, and rules published in the Texas Administrative Code. TEX. R. EVID. 202-204.

II. Special Considerations For Judicial Notice on Appeal

As noted above, Rule 201(f) (judicial notice of adjudicative facts) and Rule 202 (determination of the law of other states) expressly provide that judicial notice may be taken at any stage of the proceeding. *See Office of Pub. Util. Counsel v. Public Util. Comm’n of Tex.*, 878 S.W.2d 598, 600 (Tex. 1994) (court of appeals erred by refusing to take judicial notice of published PUC order). It has also long been the case under the common law that judicial notice may be taken for the first time on appeal. *Harper v. Killion*, 348 S.W.2d 521, (Tex. 1961) (collecting supreme court cases discussing judicial notice going back to 1891; holding that court of appeals properly took judicial notice that city of Jacksonville is located in Cherokee County).

As a practical matter, however, several considerations come into play when requesting judicial notice for the first time on appeal. Appellate courts instinctively are reluctant to consider a matter that is not part of the record, and counsel’s reason for the omission may be important. *See, e.g., Sparkman v. Maxwell*, 519 S.W.2d 852, 855 (Tex. 1975) (refusing to take judicial notice of Manual on Uniform Traffic Control Devices when trial court not requested to do so and was not given the opportunity to examine the necessary source material); *Tran v. Fiorenza*, 934 S.W.2d 740 (Tex. App.—Houston [1st Dist.]

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1996, no writ) (appellate courts are reluctant to take judicial notice of evidence when trial court was not afforded opportunity to examine and take into consideration that evidence; refusing to take judicial notice of Codes of Canon Law of the Catholic Church); *Duderstadt Surveyors Supply v. Alamo Express, Inc.*, 686 S.W.2d 351, 354 (Tex. App.—San Antonio 1985, writ ref'd n.r.e.) (court would not rely on railroad commission tariff not presented to trial court). Appellate courts are also reluctant to take judicial notice for the first time on appeal of matters that go to the merits of the dispute. See *Gaston v. State*, 63 S.W.3d 893, 900-01 (Tex. App.—Dallas 2001, no pet.) (explaining that usually courts of appeals only take judicial notice to determine jurisdiction or to resolve ancillary matters, not the merits; taking judicial notice of district clerk's practice in assigning case numbers). Finally, one commentator has observed that appellate courts are generally more likely to take judicial notice for the first time on appeal if they are upholding the trial court's judgment, rather than if the notice will result in reversal. See Larkin, *supra*, at 215.

III. Judicial Notice of Facts

A. Adjudicative Facts

1. Governing Rule

Judicial notice of adjudicative facts is governed by Texas Rule of Evidence 201:

Rule 201. Judicial Notice of Adjudicative Facts

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

(b) Kinds of Facts. 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.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing Jury. In civil cases, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In criminal cases, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

One point to keep in mind if judicial notice of adjudicative facts is an issue on appeal is that failure to provide opportunity to be heard may be a violation of due process. See *Ohio Bell Tel. Co. v. Public Utils. Comm'n*, 301 U.S. 292, 302-03 (1937); see also *Garner v. Louisiana*, 368 U.S. 157, 173-74 (1961). Rule 201(e) was designed specifically to address this concern. Larkin, *supra*, at 216-17.

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2. Examples of Judicial Notice on Appeal of Adjudicative Facts

The following section includes just a few examples of courts taking (or refusing to take) judicial notice of adjudicative facts for the first time on appeal.

a. Scientific Evidence/Expert Testimony

Texas courts sometimes treat scientific evidence as an adjudicative fact, subject to the requirements of Rule 201, and sometimes as a legislative fact, which is not subject to those requirements. The Justices of the Court of Criminal Appeals in particular have written extensively on the propriety of taking judicial notice on appeal of the reliability of scientific principles and methods in the absence of evidence on those issues at trial. See *Hernandez v. State*, 116 S.W.3d 26, 28-32 (Tex. Crim. App. 2003) (explaining that once a scientific principle is generally accepted through adversarial *Daubert/Kelly* hearings, subsequent courts may take judicial notice of the validity or invalidity of the theory based on the evidence produced in the prior hearings; refusing to take judicial notice of reliability of particular kind of urinalysis machine when prosecution presented no evidence of reliability or any published judicial opinions to support reliability; extensive separate opinions on the propriety of using sources outside the record to resolve science issues); *Emerson v. State*, 880 S.W.2d 759, 764-69 (Tex. Crim. App. 1994) (following extended discussion of judicial notice of adjudicative and legislative facts concerning scientific information, noticing general reliability of particular sobriety field test on a person's horizontal gaze, but refusing to judicially notice precise correlation between performance on test and blood alcohol level).

In a recent parental-rights termination case, the Texas Supreme Court held that the court of appeals erred in taking judicial notice of a medical examiner's testimony from a criminal proceeding that occurred while the civil appeal of the termination case was pending. *In re J.L.*, 163 S.W.3d 79, 83-84 (Tex. 2005). The court of

appeals had relied on the testimony about a child's cause of death provided to it from the criminal proceeding to reverse the termination, which testimony conflicted directly with testimony adduced from the state's medical examiner at the termination hearing. *In re J.L.*, 127 S.W.3d 911, 914 (Tex. App.—Corpus Christi 2004), *rev'd*, 163 S.W.3d 79 (Tex. 2005). The supreme court relied on the precise fact that the doctors' testimony was conflicting to conclude that judicial notice was improper because the facts testified to did not meet the requisites of Rule 201(b): "If a fact is generally known, then obviously no expert is needed. Moreover, expert testimony invariably concerns matters in dispute which are not capable of accurate resolution from outside sources." *In re J.L.*, 163 S.W.3d at 84.

In another case involving scientific evidence, the Fourteenth Court of Appeals asked the parties to supplement the record on appeal with scientific studies that the parties relied on, but which were not admitted into evidence as exhibits in compliance with Texas Rule of Evidence 803(18). *Exxon Corp. v. Makofski*, 116 S.W.3d 176, 182-84 (Tex. App.—Houston [14th Dist.] 2003, *pet. denied*). Each party was requested by the court of appeals to submit an appendix with copies of the studies they relied on, and the court reviewed them all in evaluating the legal sufficiency of the scientific evidence under the standards of *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706 (Tex. 1997). *Exxon*, 116 S.W.3d at 183.

b. Historical Facts

A typical historical fact that courts are comfortable taking judicial notice of is dates and statutory holidays. See, e.g., *Sanders v. Construction Equity, Inc.*, 42 S.W.3d 364, 367 (Tex. App.—Beaumont 2001, *pet. denied*) (taking judicial notice of fact that day was state holiday when courthouse was closed so that pleading was timely filed, even though plaintiff did not raise that issue until oral argument before the court of appeals). Less common is judicial notice of actual history. See *City of Houston v. Todd*, 41 S.W.3d 289, 301 (Tex. App.—Houston [1st Dist.] 2001,

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pet. denied) (in discussion of purpose of statute, taking judicial notice of various historic facts relating to development of the city of Houston by citing only a web site that is apparently no longer available).

c. Geographic Facts

Appellate courts readily take judicial notice of geographic facts on appeal. *Harper v. Killion*, 348 S.W.2d 521 (Tex. 1961) (court of appeals properly took judicial notice that city of Jacksonville is located in Cherokee County); *Bell v. State*, 63 S.W.3d 529, 531 (Tex. App.—Texarkana 2001, pet. ref'd) (taking judicial notice that it is 80.9 miles from Dallas to Sulphur Springs); *Stevenson v. State*, 963 S.W.2d 801, 802 (Tex. App.—Fort Worth 1998, pet. ref'd) (taking judicial notice that Fort Worth is seat of Tarrant County). One court has even explained that a formal request for judicial notice is not necessary for “notorious” geographic facts. *See Apostolic Church v. American Honda Motor Co.*, 833 S.W.2d 553, 555-56 (Tex. App.—Tyler 1992, writ denied) (it is not necessary for a party to request formal judicial notice or provide supporting information about notorious geographic facts).

An exception is made for facts considered solely within the judge’s personal knowledge. *Eagle Trucking v. Bitulithic Co.*, 612 S.W.2d 503, 507 (Tex. 1981) (court of appeals improperly resorted to judicial notice of nature of accident location—personal knowledge of area is not sufficient basis to support judicial notice); *see also I.70 Acres v. State*, 935 S.W.2d 480, 489 (Tex. App.—Beaumont 1996, no pet.) (court can take judicial notice of geographic facts such as the location of cities, counties, boundaries, dimensions, and distances, and the like because they are easily ascertainable and capable of verifiable certainty; but trial court could not have taken judicial notice of how long it took a hearsay declarant to drive a particular distance so as for statement at end of the drive to meet “present sense impression” exception to hearsay rule).

d. Statistical Information

Appellate courts also readily take judicial notice of population and census information. *Graff v. Whittle*, 947 S.W.2d 629, 635 (Tex. App.—Texarkana 1997, pet. denied) (taking judicial notice on appeal of population of Red River County); *City of Mesquite v. Moore*, 800 S.W.2d 617, 619 (Tex. App.—Dallas 1990, no writ) (taking judicial notice on appeal of population of Mesquite when census and other data was included in the trial record).

Financial rate information is also a frequent subject of judicial notice. *See, e.g., Fisher v. Westinghouse Credit Corp.*, 760 S.W.2d 802, 806 (Tex. App.—Dallas 1988, no writ) (taking judicial notice of Consumer Credit Commission’s interest rate ceilings); *Wagner & Brown v. E.W. Moran Drilling Co.*, 702 S.W.2d 760, 773 (Tex. App.—Fort Worth 1986, no writ) (after discussing comparable cases under federal judicial notice rule, holding that discount rate on ninety-day commercial paper in effect at a Federal Reserve bank is a proper subject for the taking of judicial notice by reference to appropriate Federal Reserve Bulletins). *But see West Orange-Cove v. Alanis*, 78 S.W.3d 529, 543 (Tex. App.—Austin 2002), *rev'd on other grounds*, 107 S.W.3d 558 (Tex. 2003) (refusing to take judicial notice of school district tax rates because “the information is neither (1) generally known within the territorial jurisdiction of the trial court [n]or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”)

e. Court Officers, Information, Practices, Rules

Courts have taken judicial notice on appeal of a variety of kinds of information related to court practices, including local rules (if filed with the Texas Supreme Court) and information such as the status of members of the bar. *See Seigle v. Hollech*, 892 S.W.2d 201, 202 (Tex. App.—Houston [14th Dist.] 1994, no writ) (based on then new supreme court rule requiring approval of local rules, refusing to take judicial notice on

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appeal of local trial court rules absent a certified copy of the rules in the record); *Langdale v. Villamil*, 813 S.W.2d 187, 190 (Tex. App.—Houston [14th Dist.] 1991, no writ) (“Matters of public record, such as local rules governing representation by counsel, their withdrawal and proper notice to clients are proper subjects for an appellate court to notice. . . . Indeed, an appellate court may take judicial notice of whether an attorney holds a license to practice law in Texas.”) (citations omitted); *Pettit v. Laware*, 715 S.W.2d 688, 691 (Tex. App.—Houston [1st Dist.] 1986, writ ref’d n.r.e.) (refusing to take judicial notice of local rules in absence of proof that rules were filed with the Texas Supreme Court); *Ex Parte Williams*, 870 S.W.2d 343, 347 (Tex. App.—Fort Worth 1994, pet. ref’d) (“Upon inquiry to the State Bar of Texas,” the court of appeals took judicial notice of fact that defense counsel had been disbarred two months before criminal trial); see also *Eppenauer v. Eppenauer*, 831 S.W.2d 30, 31 (Tex. App.—El Paso 1992, no writ) (taking judicial notice that Presidio County has no statutory probate court).

Some courts have taken judicial notice of their own or the lower courts’ internal procedures. See *Gaston v. State*, 63 S.W.3d 893, 900-01 (Tex. App.—Dallas 2001, no pet.) (taking judicial notice of district clerk’s practice in assigning case numbers); *Harris v. Borne*, 933 S.W.2d 535, 537 (Tex. App.—Houston [1st Dist.] 1995, no writ) (taking judicial notice of court’s internal procedure that the clerks of the First and Fourteenth Courts of Appeals serve as agents for each other’s courts). On the other hand, at least one court has held that courts may not take judicial notice of information conveyed by court staff. *O’Quinn v. Hall*, 77 S.W.3d 438, 447–48 (Tex. App.—Corpus Christi 2002, no pet.) (refusing to take judicial notice of trial court staff information regarding notice of judgment).

f. Court’s Record—Same Case/Other Cases

Courts consistently take judicial notice of their own records, even when the request comes for the first time on appeal, although sometimes they

include the common law requirement that the records must be in the same or a related proceeding involving the same or nearly the same parties. See, e.g., *Turner v. State*, 733 S.W.2d 218, 221-22 (Tex. Crim App. 1987) (after discussing common law rule, concluding that Rule 201 does not change that rule that court can take judicial notice of its own records, but not those of other courts); *In re J.G.W.*, 54 S.W.3d 826, 833 (Tex. App.—Texarkana 2001, no pet.) (court can take judicial notice on appeal of its own records in same or related proceeding involving same or nearly the same parties); *Sommers v. Concepcion*, 20 S.W.3d 27, 35 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (taking judicial notice of its own prior unpublished opinion in case as law of the case).

With regard to other courts’ records, however, appellate courts will typically require proof of the content of those records. See *Brown v. Brown*, 145 S.W.3d 745, 750 (Tex. App.—Dallas 2004, pet. denied) (refusing to take judicial notice of other court records involving same party when copies of those records were not provided); *Collins v. Guinn*, 102 S.W.3d 825, 830 (Tex. App.—Texarkana 2003, pet. denied) (court can take judicial notice of other court of appeals’ record in related case that had been transferred); *Lentino v. Cullen Ctr. Ban & Trust*, 2002 WL 220421, at *5 n.4 (Tex. App.—Houston [14th Dist.] 2002, no writ) (not designated for publication) (taking judicial notice after oral argument of other court records); *Richards v. Comm’n for Lawyer Discipline*, 35 S.W.3d 243, 251 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (court cannot take judicial notice of another court’s records without proof of those records); *Surgitek, Inc. v. Adams*, 955 S.W.2d 884, 889 n.4 (Tex. App.—Corpus Christi 1997, pet. dismissed by agr.) (taking judicial notice on appeal of other related court records when copies provided). But see, e.g., *National County Mut. Fire Ins. Co. v. Hood*, 693 S.W.2d 638, 639 (Tex. App.—Houston 1985, no writ) (concluding that Rule 201 did not change the common law rule that a court may not take judicial notice of another court’s records). See also *Thomas v. Burkhalter*, 90 S.W.3d 425, 426 (Tex. App.—Amarillo 2002, pet. denied) (court cannot take judicial notice of records filed with an

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administrative agency without proof of those records).

B. Legislative Facts, Including Epidemiology

1. Definition

As noted above, legislative facts are general facts that relate to the law and public policy, and help the court determine the content of the law and how to apply the law to the facts before it. Larkin, *supra*, at 197. They are the kinds of facts that inform a court’s decision when deciding the constitutionality of a statute, the interpretation of a statute, or the extension or restriction of the common law on public policy grounds, and the policy turns on social, economic, political, or scientific facts. 2 MCCORMICK ON EVIDENCE § 331 (Strong et al. eds., 5th ed. 1999). Such facts are not typically the object of evidentiary proof, and judicial notice of legislative facts is not limited by indisputability or any of the other provisions of Rule 201. Wellborn, *supra*, at 12.

“[T]here are no specific requirements of notice, hearing, opportunity to rebut, or supporting materials in either of these types of judicial notice.” Larkin, *supra*, at 202. “Some commentators suggest, however, that in the realm of legislative facts, the parties should have an opportunity to be heard and to rebut the reliability of the sources upon which the court relies.” *Id.*

2. Examples of Judicial Notice on Appeal of Legislative Facts

The following section includes just a few examples of courts explicitly taking judicial notice of legislative facts, or discussing the distinction between legislative and adjudicative facts.

a. Scientific Evidence

Texas courts sometimes treat scientific evidence as an adjudicative fact, subject to the requirements of Rule 201, and sometimes as a legislative fact, which is not subject to those requirements. The Justices of the Court of

Criminal Appeals in particular have written extensively on the propriety of taking judicial notice on appeal of the reliability of scientific principles and methods in the absence of evidence on those issues at trial. *See Hernandez v. State*, 116 S.W.3d 26, 28-32 (Tex. Crim. App. 2003) (explaining that once a scientific principle is generally accepted through adversarial *Daubert/Kelly* hearings, subsequent courts may take judicial notice of the validity or invalidity of the theory based on the evidence produced in the prior hearings; refusing to take judicial notice of reliability of particular kind of urinalysis machine when prosecution presented no evidence of reliability or any published judicial opinions to support reliability; extensive separate opinions on the propriety of using sources outside the record to resolve science issues; although appellate courts can take judicial notice of other appellate court decisions concerning scientific theory or methodology, “judicial notice on appeal cannot serve as the sole source of support for a bare trial court record concerning scientific reliability”); *Emerson v. State*, 880 S.W.2d 759, 764-69 (Tex. Crim. App. 1994) (following extended discussion of judicial notice of adjudicative and legislative facts concerning scientific information, taking judicial notice on appeal of the general reliability of particular sobriety field test on a person’s horizontal gaze, but refusing to judicially notice precise correlation between performance on test and blood alcohol level); *O’Connell v. State*, 17 S.W.3d 746, 749 (Tex. App.—Austin 2000, no pet.) (reliability of HGN test is a legislative fact, not an adjudicative one, for purpose of judicial notice rule).

b. Legislative History

Courts have also taken judicial notice of the legislative history of a statute, without citing to any published source for that history. *Evans v. Am. Publ’g Co.*, 118 Tex. 433, 440-41, 13 S.W.2d 358, 361 (1929) (taking judicial notice of history surrounding enactment of venue statute governing where a libel or slander suit against a newspaper may be brought); *see also Anderson v. Polk*, 1117 Tex. 73, 82, 297 S.W. 219, 221 (Tex. 1927) (In taking judicial notice of facts surrounding Spanish

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grant to city disclosed by public statutes, the court observed, “[T]he courts will take judicial knowledge of certain facts disclosed by Texas history and by public statutes.”).

Texas courts will also take judicial notice of the legislative history of federal statutes. *Boone v. Pierce*, 218 S.W.2d 347, 348 (Tex. Civ. App.—Waco 1949, writ ref’d) (taking judicial notice of the historical context and purpose of a federal statute) (“It is a matter of common knowledge that the Emergency Farm Mortgage Act of 1933, U.S.C.A. Title 12, Chap. 7, Sec. 1016 et seq., was originally enacted at a time of national crisis resulting from an economic depression. The general purpose and intent of the Congress in the enactment thereof was to extend relief to harassed farmers struggling under debts and thereby enable such farmers to have their debts voluntarily scaled down and refinanced so as to save their farms and rehabilitate themselves financially.”).

c. Statistical Information

The Legislature frequently consults statistical information to inform its legislative decisions. In a fractured decision by the Texas Supreme Court in which the majority rendered a provision of the Family Code unconstitutional, the dissent takes issue with the majority opinion’s reliance on and judicial notice of statistical information in reaching its decision to hold legislation unconstitutional. *In re J.W.T.*, 872 S.W.2d 189, 217-18 (Tex. 1994) (Cornyn, J., dissenting) (criticizing taking judicial notice of social science articles in rendering the Family Code unconstitutional: “As we have said repeatedly when assessing the constitutionality of statutes, the wisdom and expediency of the law is the legislature’s sole prerogative. We have a clear duty to uphold statutes even if they produce a policy of which we disapprove. If the social goals upon which the court relies are indeed ‘emerging,’ it is up to the people of Texas, not this court, to make them law.”).

C. Non-Adjudicative (“Reasoning”) Facts

1. Definition

Non-adjudicative (“reasoning”) facts are those very basic facts within common knowledge about human affairs, the meaning of words, and the environment. *Id.* at 12-13. Nonadjudicative facts are simply part of the judicial reasoning process. FED. R. EVID. 201 advisory committee note (a). “In conducting a process of judicial reasoning, as of other reasoning, not a step can be taken without assuming something which has not been proved; and the capacity to do this with competent judgment and efficiency, is imputed to judges and juries as part of their necessary mental outfit.” *Id.* (citing THAYER, PRELIMINARY TREATISE ON EVIDENCE 279-280 (1898)). “[E]very case involves the use of hundreds or thousands of non-evidence facts. When a witness in an automobile accident case says ‘car,’ everyone, judge and jury included, furnishes, from non-evidence sources within himself, the supplementing information that the ‘car’ is an automobile, not a railroad car, that it is self-propelled, probably by an internal combustion engine, that it may be assumed to have four wheels with pneumatic rubber tires, and so on.” *Id.* Non-adjudicative facts are therefore not appropriate subjects for any formalized treatment of judicial notice. “The judicial process cannot construct every case from scratch . . .” *Id.* Because of the nature of nonadjudicative facts, “there are no specific requirements of notice, hearing, opportunity to rebut, or supporting materials in either of these types of judicial notice.” Larkin, *supra*, at 202.

2. Examples of Cases Taking Judicial Notice of What Are More Properly Characterized as Non-adjudicative (Reasoning) Facts.

In re Houston Chronicle Publ’g Co., 64 S.W.3d 103, 109 (Tex. App.—Houston [14th Dist.] 2001, orig. proceeding) (taking judicial notice on appeal of the unusually emotional nature of the issues involved in the underlying case, which was the Andrea Yates murder trial in which she was

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charged with the drowning deaths of her five small children—and the extensive local and national media coverage the underlying case had already generated); *Lovelady v. State*, 65 S.W.3d 810, 812-13 (Tex. App.—Beaumont 2002, no pet.) (taking judicial notice of some adjudicative facts, e.g., the ownership of particular property, but also taking judicial notice of the non-adjudicative fact that land is real property).

IV. JUDICIAL NOTICE OF LAW

A. Domestic Law

Courts distinguish between taking judicial notice of adjudicative facts, and taking judicial notice of the law. *Watts v. State*, 99 S.W.3d 604, 609 (Tex. Crim. App. 2003). “The judicial function of determining law is traditionally characterized as within the concept of judicial notice.” Murl A. Larkin, *Texas Rules of Evidence Handbook*, 30 HOUS. L. REV. 193, 239 (1993); see CHRISTOPHER B. MUELLER & LEONARD C. KIRKPATRICK, *FEDERAL EVIDENCE* § 59, at 294 (2d ed. 1994) (All judicial notice of law falls within the general category of “determining the law.”). Judicial notice of the law is not limited by the indisputability requirement of Rule 201 applicable to judicial notice of adjudicative facts.

“Law” includes not only law of the forum, but also law of sister states and foreign law. But the rules for judicial notice vary depending on the type of law to be judicially noticed. While Article II of the Texas Rules of Evidence governs judicial notice of adjudicative facts and foreign law, it does not apply to judicial notice of the laws of the forum. *Watts*, 99 S.W.2d at 609. Judicial notice of the law of this State is instead governed by individual statutes and cases. *Id.*

1. Laws of Texas

Texas courts can, of course, take judicial notice of the laws of Texas. *Watts*, 99 S.W.2d at 609. Indeed, the correct rule is stated in mandatory terms: Texas courts are required to take judicial notice of the public statutes of this state. *Kish v. Van Note*, 692 S.W.2d 463, 467 (Tex. 1985)

(Where it was evident from the face of the contract that credit life insurance was procured at a premium or rate not fixed or approved by the State Board of Insurance was not disclosed, the contract was in violation of Texas Consumer Credit Code). In determining the content, scope, and meaning of the applicable law, the court may look to statutes, rules, case law, and legislative history. *Id.* When the law of the forum is at issue, the court is not restricted in its investigation into the content or applicability of the laws of the forum; the court may make an independent search for persuasive data or rest content with the materials the parties provide. *Id.*; *Larkin, supra*, 30 HOUS. L. REV. at 198.

2. Other “Domestic” Laws

Unlike judicial notice of the law of Texas, judicial notice of other “domestic” laws—Texas city and county ordinances; contents of the Texas Register; and rules of agencies codified in the Administrative Code—is governed by a specific rule in the Texas Rules of Evidence. Rule 204 provides:

Rule 204. Determination of Texas City and County Ordinances, the Contents of the Texas Register, and the Rules of Agencies Published in the Administrative Code

A court upon its own motion may, or upon the motion of a party shall, take judicial notice of the ordinances of municipalities and counties of Texas, of the contents of the Texas Register, and of the codified rules of the agencies published in the Administrative Code. Any party requesting that judicial notice be taken of such matter shall furnish the court sufficient information to enable it properly to comply with the request, and shall give all parties such notice, if any, as the court

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may deem necessary, to enable all parties fairly to prepare to meet the request. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken. The court's determination shall be subject to review as a ruling on a question of law.

TEX. R. EVID. 204.

Unlike Rules 201 and 202, Rule 204 does not contain language that judicial notice can be taken at any stage of the proceedings. The absence of this language from Rule 204 may imply that judicial notice of the items listed in Rule 204 must be raised in the trial court, and that an appellate court cannot take judicial notice of these things for the first time on appeal. *Hollingsworth v. King*, 810 S.W.2d 772, 774 (Tex. App.—Amarillo) (noting the absence of this language from Rule 204, but not reaching the issue), *writ denied per curiam*, 816 S.W.2d 340 (Tex. 1991); Larkin, *supra*, at 239. In the context of taking judicial notice for the first time on appeal the type of materials governed by Rule 204, some courts have expressed a reluctance to do so:

[A]n appellate court is naturally reluctant to take judicial notice of matters such as municipal charters and regulations promulgated by state agencies when the trial court was not requested to do so and was not given an opportunity to examine the necessary source material. See 1 McCormick and Ray, *Texas Law of Evidence*, 2d ed. 1956, §§ 152, 155. This does not mean that we would refuse to take judicial notice under similar circumstances where necessary to avoid an unjust judgment.

Sparkman v. State, 519 S.W.2d 852, 855 (Tex. 1975); *accord Hollingsworth*, 810 S.W.2d at 774 (while recognizing that an appellate court may take judicial notice for the first time on appeal of facts that the trial court would have been authorized to notice, citing *Sparkman* to justify the appellate court's reluctance to do so when the trial court was not given the opportunity to examine source material).

A number of appellate courts have required certified or authenticated copies of Rule 204 materials, or have at least suggested that a certified or verified copy would be required. *E.g.*, *Fields v. City of Tex. City*, 864 S.W.2d 66, 69 (Tex. App.—Houston [14th Dist.] 1993, writ denied) (When party requesting judicial notice of city charter provided only an “unauthenticated” copy, observing that “city charters may be likened to municipal ordinances which courts, including this one, have refused to take judicial notice of when not submitted in verified form.”); *City of Houston v. Southwest Concrete Constr., Inc.*, 835 S.W.2d 728, 733 n.5 (Tex. App.—Houston [14th Dist.] 1992, writ denied) (declining to take judicial notice: “To be a part of the record before an appellate court, municipal ordinances must be submitted in verified form.”); *Metro Fuels, Inc. v. City of Austin*, 827 S.W.2d 531, 532 (Tex. App.—Austin 1992, no writ) (declining to take judicial notice: “To enable an appellate court to review a municipal or county ordinance, parties must both comply with the provisions of Rule 204 and make the ordinance part of the trial-court record.”); *Hollingsworth*, 810 S.W.2d at 774 (“The copies [of municipal ordinances] are not authenticated by affidavit or certification of an official custodian. We are not aware of, nor have we been cited, any independent source from which to verify the ordinances. The unauthenticated copies alone are not sufficient information to enable us to comply with the Hollingsworths’ request. We therefore decline to take judicial notice of the municipal ordinances.”); *Myers v. Cliff Hyde Flying Serv., Inc.*, 325 S.W.2d 841, 846 (Tex. Civ. App.—Houston 1959, no writ) (refusing to take judicial notice of Civil Air Regulations of the Civil Aeronautics Board of the United States).

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Courts appear to apply this heightened proof standard to municipal and county ordinances, but not to the other materials covered by Rule 204—state agency rules published in the Texas Register and the Texas Administrative Code:

With the advent of systematic publication of state agency rules, it is normally no more necessary for a party to request that the trial court take judicial notice of the contents of the Texas Register or Texas Administrative Code than it is necessary to request that the trial court take judicial notice of Texas statutes or the contents of Texas appellate cases in the South Western Reporter.

Metro Fuels, 827 S.W.2d at 532 n.3. The rationale for continuing to require heightened proof of city and county ordinances is simple: “At present, municipal and county ordinances are difficult to research and verify, unlike state agency rules published in the Texas Register and Texas Administrative Code.” *Id.* at 532 & n.3 (“Municipal and county ordinances, unfortunately, are not capable of such swift and reliable verification.”). Additionally, the Texas Government Code arguably makes judicial notice of administrative agency regulations mandatory. *Eckman v. Des Rosiers*, 940 S.W.2d 394, 399 (Tex. App.—Austin 1997, no writ) (citing TEX. GOV’T CODE ANN. § 2002.022(a), .054(1), which provides that “[s]uch regulations ‘are to be judicially noticed.’”).

In *Metro Fuels*, the court declined to take judicial notice of an ordinance when no record of the ordinance was made at trial, even though appellants sent a certified copy of sections of the ordinance to the court of appeals. The appellants did not request that the appellate court take judicial notice of the ordinance, and the court declined to do so on its own motion, citing as its reasons:

[T]here is no showing that this is the version of the ordinance on which the district court rendered

its judgment. To enable an appellate court to review a municipal or county ordinance, parties must both comply with the provisions of Rule 204 and make the ordinance part of the trial-court record. Absent such action, the appellate court is unable to ascertain what law was at issue below.

Id. (citations omitted) (citing *Hollingsworth*, 810 S.W.2d at 774).

B. Federal Law

Although Texas Rule of Evidence 202 technically governs judicial notice of the laws of sister states, courts treat judicial notice of federal law as governed by that rule. *E.g.*, *Daugherty v. So. Pac. Transp. Co.*, 772 S.W.2d 81, 83-84 (Tex. 1989); *River Oaks Place Council of Co-Owners v. Daly*, 172 S.W.3d 314, 320 (Tex. App.—Corpus Christi 2005, no pet.). Rule 202 provides:

Rule 202. Determination of Law of Other States

A court upon its own motion may, or upon the motion of a party shall, take judicial notice of the constitutions, public statutes, rules, regulations, ordinances, court decisions, and common law of every other state, territory, or jurisdiction of the United States. A party requesting that judicial notice be taken of such matter shall furnish the court sufficient information to enable it properly to comply with the request, and shall give all parties such notice, if any, as the court may deem necessary, to enable all parties fairly to prepare to meet the request. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice

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and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken. Judicial notice of such matters may be taken at any stage of the proceeding. The court's determination shall be subject to review as a ruling on a question of law.

TEX. R. EVID. 202; *see also* 44 U.S.C. § 1507 (requiring that the contents of the Federal Register “shall be judicially noticed”).

Although some older cases suggested that Texas courts are *required* to take judicial notice of federal laws, *see Tippett v. Hart*, 497 S.W.2d 606, 613 (Tex. Civ. App.—Amarillo 1973) (“Texas courts are required to take judicial notice of the laws of the United States, including all the public acts and resolutions of Congress, and proclamations of the president thereunder, as well as administrative rules and regulations adopted by boards, departments and commissions pursuant to federal statutes.”), *writ ref’d n.r.e. per curiam*, 501 S.W.2d 874 (Tex. 1974), the Texas Supreme Court has rejected this view as overly broad. *Daugherty v. So. Pac. Transp. Co.*, 772 S.W.2d 81, 83-84 (Tex. 1989) (“We do not agree, however, with the Daughertys’ contention that courts must take judicial notice of federal law. *See Tippett v. Hart*, 501 S.W.2d 874-75 (Tex.1973) (per curiam).”.) The more accurate statement of the rule is that “Rule 202 requires the moving party to furnish sufficient information to the trial court for it to determine the foreign law’s applicability to the case and to furnish all parties any notice that the court finds necessary. The determination of compliance with these requirements is within the discretion of the trial court.” *Daugherty*, 772 S.W.2d at 83-84. Thus, courts have declined to take judicial notice of a federal regulation when a requesting party failed to supply the court with a copy. *See, e.g., Singleton v. State*, 91 S.W.3d 342, 350 (Tex. App.—Texarkana 2002, no pet.) (declining to take judicial notice of the NHTSA Guidelines because the defendant did not supply the court with a copy).

C. Law of Sister States

Judicial notice of the law of other states is governed by Texas Rule of Evidence 202, which provides:

Rule 202. Determination of Law of Other States

A court upon its own motion may, or upon the motion of a party shall, take judicial notice of the constitutions, public statutes, rules, regulations, ordinances, court decisions, and common law of every other state, territory, or jurisdiction of the United States. A party requesting that judicial notice be taken of such matter shall furnish the court sufficient information to enable it properly to comply with the request, and shall give all parties such notice, if any, as the court may deem necessary, to enable all parties fairly to prepare to meet the request. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken. Judicial notice of such matters may be taken at any stage of the proceeding. The court’s determination shall be subject to review as a ruling on a question of law.

TEX. R. EVID. 202. If the court is not furnished with “sufficient information” to establish the law of another state, the trial court may, in its discretion, choose not to judicially notice the sister-state law. *See Ogletree v. Crates*, 363 S.W.2d 431, 435 (Tex. 1963). Put another way, whether the requirements of Rule 202 have been complied with is within the discretion of the trial

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court. *Daugherty v. So. Pac. Transp. Co.*, 772 S.W.2d 81, 83-84 (Tex. 1989); *see, e.g., Knops v. Knops*, 763 S.W.2d 864, 867 (Tex. App.—San Antonio 1988, no writ) (request to take judicial notice of “the common law, public statutes and court decisions of the state of New Mexico” was “a broad, general request which fails to apprise the trial court of the particular laws relied upon and to provide sufficient information to enable the court to properly comply with the request”); *Ewing v. Ewing*, 739 S.W.2d 470, 472 (Tex. App.—Corpus Christi 1987, no writ) (rejecting request to take judicial notice as not sufficiently particular).

But, once the law has been invoked by proper motion, a trial court has no discretion and must acknowledge the foreign law. *Keller v. Nevel*, 699 S.W.2d 211, 211 (Tex. 1985) (holding that the appellate court erred in disregarding trial court’s recognition of New Hampshire law merely on the basis that the record revealed no express ruling on the plaintiff’s motion requesting judicial notice). What is considered “sufficient information” under Rule 202 is enough to apprise the court of the laws relied on. *See Holden v. Capri Lighting*, 960 S.W.2d 831, 833 (Tex. App.—Amarillo 1997, no pet.). Sometimes courts will require a copy of the law; other times the party requesting judicial notice just has to cite to the law. *See Burns v. RTC*, 880 S.W.2d 149, 151 (Tex. App.—Houston [14th Dist.] 1994, no writ) (provide a copy); *Cal. Growers, Inc. v. Palmer*, 687 S.W.2d 384, 386 (Tex. App.—Houston [14th Dist.] 1985, no writ) (“Texas case law does not hold that an actual copy of the foreign statute is required to give the judge sufficient information to take judicial notice of the laws of another state.”).

But, at the same time that a party is required to furnish the court with sufficient information of another state’s law, an appellate court is not confined solely to trial court record for “evidence” of law of sister state, but may conduct its own investigation into what the law of a sister state is. *Nubine v. State*, 721 S.W.2d 430, 434 (Tex. App.—Houston [1st Dist.] 1986, writ ref’d) (“From readily available and easily accessible sources, appellate judges are competent to

ascertain with reasonable certainty” what the law of a sister state is.).

The fact that judicial notice of law may be taken at any time under Rule 202’s plain language should not be confused with a party’s obligation to timely raise a choice-of-law issue. *Pittsburgh Corning Corp. v. Walters*, 1 S.W.3d 759, 769 (Tex. App.—Corpus Christi 1999, pet. denied) (“[T]he mere fact that the court may take judicial notice of foreign laws does not mean that choice-of-law issues may be raised at any point in the proceeding.”). The presumption that another jurisdiction’s law is the same as Texas law applies even when a party timely raises a choice-of-law issue, but fails to prove up what the sister state’s law is. *See id.* (“[T]he failure to provide adequate proof relieves the court of this requirement [to take judicial notice of another state’s law] and results in a presumption that the law of the foreign jurisdiction is identical to the law of Texas.”); *Dawson-Austin v. Austin*, 920 S.W.2d 776, 786 (Tex. App.—Dallas 1996) (“In the absence of pleading and proof of the law of a sister state, it is presumed that the law of the state where the judgment was rendered is identical to the law of Texas.”), *rev’d on other grounds*, 968 S.W.2d 319 (Tex. 1998); *see also Unocal Corp. v. Dickinson Res., Inc.*, 889 S.W.2d 604, 607 n.2 (Tex. App.—Houston [14th Dist.] 1994) (“[W]e have applied the presumption that the law of Texas as the forum state is identical to the law of Louisiana. This presumption applies when the applicability and substance of the foreign state’s laws have not been pleaded and proved on each issue.” (citing *Gevison v. Manhattan Constr. Co.*, 449 S.W.2d 458, 465 n.2 (Tex.1969))), *writ denied per curiam*, 907 S.W.2d 453 (Tex. 1995); *see, e.g., Holden v. Capri Lighting*, 960 S.W.2d 831, 833 (Tex. App.—Amarillo 1997, no writ) (trial court properly applied Texas law where California law was not proved up).

D. Foreign Law

Judicial notice of the law of foreign countries is governed by Texas Rule of Evidence 203, which provides:

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Rule 203. Determination of the Laws of Foreign Countries

A party who intends to raise an issue concerning the law of a foreign country shall give notice in the pleadings or other reasonable written notice, and at least 30 days prior to the date of trial such party shall furnish all parties copies of any written materials or sources that the party intends to use as proof of the foreign law. If the materials or sources were originally written in a language other than English, the party intending to rely upon them shall furnish all parties both a copy of the foreign language text and an English translation. The court, in determining the law of a foreign nation, may consider any material or source, whether or not submitted by a party or admissible under the rules of evidence, including but not limited to affidavits, testimony, briefs, and treatises. If the court considers sources other than those submitted by a party, it shall give all parties notice and a reasonable opportunity to comment on the sources and to submit further materials for review by the court. The court, and not a jury, shall determine the laws of foreign countries. The court's determination shall be subject to review as a ruling on a question of law.

TEX. R. EVID. 203. As the text indicates, the requirements for judicial notice of the laws of foreign countries differs significantly with the requirements for judicial notice of federal and sister states' laws. Rule 203, unlike Rule 202, does *not* indicate that a court may take judicial notice of the law of a foreign country on its own motion. Instead, in comparison to Rule 202, Rule 203's

provisions reflect a heightened concern for the parties to have sufficient information concerning the foreign law and to have adequate notice of the possibility that the trial court might take judicial notice of the law of a foreign country. TEX. R. EVID. 203; *see, e.g., Ossorio v. Leon*, 705 S.W.2d 219, 221-22 (Tex. App.—San Antonio 1985, no writ) (text, translation, and affidavit).

In addition to requiring that the requesting party give the other party notice “at least 30 days before the date of trial,” Rule 203 also expressly provides that if the court takes into consideration materials other than those submitted by a party, the trial court must give the parties notice, an opportunity to be heard, and the chance to submit further materials. TEX. R. EVID. 203; *see also Lawrenson v. Global Marine, Inc.*, 869 S.W.2d 519, 525 (Tex. App.—Texarkana 1993, writ denied) (requirement of notice that the court is considering additional materials outside of the parties' submissions also applies to judicial notice of foreign law in connection with a summary judgment proceeding). By contrast, Rule 202 is silent on whether the court may consider materials other than those submitted by the parties, although decisional law is clear that a court may do so. But, under Rule 202, the court need not give the parties notice that it is going beyond the parties' submitted materials.

And because Rule 203 requires that a requesting party give notice 30 days before a trial date—whereas Rule 202 expressly states that judicial notice may be taken at any stage of the proceedings, the text of Rule 203 forecloses the argument that an appellate court could take judicial notice for the first time on appeal.

But, like judicial notice of the law of sister states, if a party fails to prove up foreign law, the court presumes that foreign law is the same as Texas law. *See Davis v. Davis*, 521 S.W.2d 603, 606 (Tex. 1975); *Pittsburgh Corning Corp. v. Walters*, 1 S.W.3d 759, 769 (Tex. App.—Corpus Christi 1999, pet. denied); *see, e.g., Pennwell Corp. v. Ken Assocs., Inc.*, 123 S.W.3d 756, 761 (Tex. App.—Houston [14th] 2003, pet. denied) (party failed to prove Japanese law so court was

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entitled to presume it was the same as Texas); *Exxon Corp. v. Breezevale, Ltd.*, 82 S.W.3d 429, 437 (Tex. App.—Dallas 2002, pet. denied) (failure to present notice or to prove Nigerian law).

“Rule 203 has been aptly characterized as a hybrid rule by which the presentation of the foreign law to the court resembles the presentment of evidence but which ultimately is decided as a question of law.” *Long Distance Int’l, Inc. v. Telefonos de Mexico, S.A. de C.V.*, 49 S.W.3d 347, 351 (Tex. 2001); see *AG Volkswagen v. Valdez*, 897 S.W.2d 458, 461 (Tex. App.—Corpus Christi 1995, orig. proceeding), writ conditionally granted on other grounds, 909 S.W.2d 900 (Tex. 1995). “However, like a question of fact, when the only evidence before the court is the uncontroverted opinions of a foreign law expert, the court will generally accept those opinions as true so long as they are reasonable and consistent with the text of the law.” *AG Volkswagen*, 897 S.W.2d at 351.

E. Trends in Judicial Notice of Law Doctrine

The most identifiable trend in judicial notice of law is that, as ease of access to sources of law improves, it will be increasingly appropriate for courts to take judicial notice of all law. For instance, under Rule 204, courts continue to apply a heightened proof standard to municipal and county ordinances, but have relaxed the proof requirements for the other materials covered by that same rule—state agency rules published in the Texas Register and the Texas Administrative Code:

With the advent of systematic publication of state agency rules, it is normally no more necessary for a party to request that the trial court take judicial notice of the contents of the Texas Register or Texas Administrative Code than it is necessary to request that the trial court take judicial notice of Texas statutes or the contents of Texas appellate cases in the South Western Reporter.

Metro Fuels, Inc. v. City of Austin, 827 S.W.2d 531, 532 n.3 (Tex. App.—Austin 1992, no writ).

In a similar vein, some courts have begun to develop a sense of which sources on the web are reliable enough to be cited, without much fanfare, as the source of rules. See, e.g., *In re Wood*, 140 S.W.3d 367, 369 & n.2 (Tex. 2004) (citing www.adr.org for supplemental rules of the American Arbitration Association adopted after the court of appeals had issued its opinion and in the wake of the United States Supreme Court’s decision in *Green Tree Fin. Co. v. Bazzle*, 539 U.S. 444 (2003)); accord *Pedcor Mgmt. Co. Welfare Benefit Plan v. Nations Personnel of Tex., Inc.*, 343 F.3d 355, 362 n.36 (5th Cir. 2003).