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Chapter 20: Evidence

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C H A P T E R 2 0

Evidence

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§20.1. **Judicial notice: State administrative regulation.** In *Gentile, Petitioner*,¹ the Supreme Judicial Court, after noting that "We cannot be required to take judicial notice of regulations,"² apparently on its own initiative examined Regulation No. 1 of the Department of Mental Health of the Commonwealth, to learn that the Department had not designated Bridgewater State Hospital under G.L., c. 123, §10, as a hospital to which mentally ill, epileptic and feeble-minded persons should be committed. This was done, as the Court said, in order to ascertain what might be brought to the attention of the Court in the course of further proceedings which would be required.

So far as this writer is aware, this is the first instance in which the Supreme Judicial Court has judicially noticed a regulation of a state department or other administrative agency of the Commonwealth. The general rule that such a regulation will be treated strictly as a question of fact, and cannot be judicially noticed, which had been fully enunciated in *Finlay v. Eastern Racing Association, Inc.*,³ was strongly restated as recently as 1957, in the opinion in *Diaduk's Case*.⁴

In the *Gentile* case, however, the Court's preliminary statement, as noted above, was the milder phrase "We cannot be required to take judicial notice of regulations." For this proposition the Court cited its holdings in the *Finlay* case, *Mastrullo v. Ryan*,⁵ and *Gilbert v. Merrimac Development Corp.*⁶ This constitutes an interesting grouping of citations, inasmuch as the *Finlay* case dealt with a state administrative regulation, *Mastrullo* with a federal administrative regulation, and *Gilbert* with a federal executive order.

The question of judicial notice of a federal regulation has been handled somewhat delicately by the Supreme Judicial Court. In

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§20.1. 1 1959 Mass. Adv. Sh. 921, 159 N.E.2d 86.

2 1959 Mass. Adv. Sh. at 922, 159 N.E.2d at 87.

3 308 Mass. 20, 26-28, 30 N.E.2d 859, 863-864 (1941).

4 336 Mass. 5, 142 N.E.2d 356 (1957). For a comment on this case, see 1957 Ann. Surv. Mass. Law §33.1.

5 328 Mass. 621, 622, 105 N.E.2d 469, 470 (1952).

6 333 Mass. 758, 759, 133 N.E.2d 491, 492-493 (1956).