

Chapter 1 : An introduction to the Military Justice System | Braun Associates Law

Military law (military justice) is the branch of the law that regulates a government's military establishment. It is entirely penal or disciplinary in nature and, in the United States, includes and is analogous to civilian criminal law.

These instruments can be found in the Canadian Forces Administrative Orders and Defence Administrative Orders and Directives; they are used as direction for authorities within the CF to administer the day-to-day considerations of the Forces. For example, officer cadets attending military college are organized and subject to regulations more appropriate for their academic success than the enforcement of discipline, as might be expected of fully trained members. Volume IV, Appendix 6. In Canadian practice, armed combat is a strictly regulated environment and legal officers are a crucial part of the planning that goes into operational decisions. The Military Law Centre on the grounds of Royal Military College of Canada, staffed with military lawyers, oversees the education of officers and troops in legal matters, trains military lawyers and advises Ottawa on matters of policy and doctrine. Legal education is integrated into the regular training that CF members undergo. The military jurisdiction encompasses all military persons: However, military chaplains are outside the criminal military jurisdiction. The military jurisdiction starts from the moment when a person reports to duty or was liable to report to duty and lasts to the moment when the person has been discharged from service and, in case of conscripts and involuntarily activated reservists, has also left the military area. During wartime, also civilians serving in the Defence Forces or in civilian institutions that have been put under the direction of Defence Forces are under military jurisdiction. The military criminal law, the 45th Chapter of the penal code, encompasses only the crimes which only military persons can commit. The most important of these are various types of "service crime" Finnish: Other crimes are subject to usual civilian law. However, they are only under military jurisdiction if the crime has been committed against another military person or against the Defence Forces. During wartime, the crimes carry considerably larger sentence ranges and, if the crime causes the danger to the military unit, the sentence range is even harsher. For example, desertion carries, in the peacetime, a sentence of disciplinary punishment or up to one year in prison. During wartime, it carries a mandatory prison sentence of not more than four years, and, if the crime caused a particularly immediate danger to the unit, a mandatory minimum of one year, with a maximum sentence of ten years. The battalion commander and military police officers have also the right to arrest the suspect and to conduct searches inside a military area. The Defence Command has, in addition to the power of arrest, the power to use almost all other measures that are available to the Finnish police. If the Defence Command requires the use of the most invasive investigative measures e. If the police considers it necessary, they may always take the case over, however. After hearing the suspect, the disposing superior either frees the suspect from suspicion or gives an appropriate punishment within the range allowed to him. During peacetime, professional soldiers with the exception of certain soldiers deployed to international missions cannot be given other disciplinary punishment than a public letter of reprimand or a fine. When the brigade commander determines that he cannot give sufficient punishment, he will transfer the matter to the public prosecutor who will commence prosecution in a civilian court. However, the appeals will not prevent the execution of the punishment. The district court has a learned civilian judge and two military members. One of them is an officer and the other a warrant officer, an NCO or a private. The military members of the district court are selected by the court of appeals on the motion of the Commander of the Finnish Army. The military members of the Courts of Appeals are selected by the Ministry of Justice on motion of the Ministry of Defence. The military members of the Supreme Court are selected by the President of Finland. When the military person holds a permanent or temporary paid position as a state military servant Finnish: If the sentence is a life sentence, dismissal is mandatory. The court may also sentence dismissal with a shorter prison sentence if the crime shows that the person is unsuitable for state employment. In such cases, the former service member is investigated by the civilian police but the case is handled by a court with military members. In sentencing, disciplinary punishments cannot be used. Instead if a disciplinary punishment, an ordinary day-fine is sentenced. This can happen even if no criminal charges are pressed. Following this, the person may be declared permanently unfit for duty by the Defence Forces regional

office for safety and security reasons. Any person who is sentenced to prison for at least two years or to prison for any length of time for a crime of treasonous nature specifically, crimes in chapters 11 and 12 of the Penal Code, e. Thus, not only active military persons but also retired personnel, reservists and persons who are too old to belong to reserve may lose their military ranks for crimes of civilian nature. Partly this is due to the fact that the bar of criminality has been set consciously low. The crime of absence without leave is committed by a soldier who is even a minute late, and a slightest wilful or negligent disregard for a standing order or a regulation fulfils the indicia of the "service crime". The legislator has purposefully given the military superiors the legal tools by which to maintain discipline by punishing even the slight appearances of bad conduct if they feel it necessary. On the other hand, handing out unofficial punishments is discouraged in the extreme. An absolute majority of these are handled by summary measures, i. In year , courts of appeals handled only a total of 5 military criminal cases. The German constitution allows the federal government in art. In fact, no such laws have been enacted so far. Nonetheless, there exist numerous acts that only concern soldiers describing their special status, their rights and duties. The military penal code Wehrstrafgesetz applies to soldiers by extending the civil penal code Strafgesetzbuch to crimes that can be only committed on military duty: General offenses such as desertion, illegal use of weapons and more and offenses that interfere with the military hierarchy such as mutiny or abuse. When investigating, working for the attorney is equivalent to any German police in civil issues. In cases of both groups involved on German terrain , regular and military police cooperate. In emergencies, the regular police is authorized to maintain order until the military police has arrived. Soldiers that violate military regulations may also receive penalties in form of Non-judicial punishment or in severe cases judicial punishments by a special type of court. These procedures are defined by the military discipline code Wehrdisziplinarordnung, WDO. Note that the WDO describes how to proceed on offenses that are not yet covered by the military penal code but clearly against a military regulation. The head of the unit as immediate superior who acts as primary disciplinary master has the exclusive right to choose: The judge of such a court is a civil one, two military officers are attending every case and act as consultants to the judge. He will remain in arrest for the same time but continue serving in his unit on duty times unless the court has imposed further limits. In the case of a soldier being sentenced to jail for one year or more 6 months or more in case of bribery he will be discharged from the armed forces. All these three Acts are available on search from the official website. All such Acts draw their inspiration from the Army Act. The military courts in India are coming under extreme stress with the establishment of Armed Forces Tribunal in

Chapter 2 : Military justice - Wikipedia

military justice system Primary purpose of this system is to provide military commanders with a set of tools necessary to enforce good order and discipline. Founded on the British Articles of War and the Fifth Amendment of the United States Constitution.

PRESIDENT MAY PRESCRIBE RULES a Pretrial, trial, and post trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to 1 general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or 2 to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel. However, the person authorized under regulations prescribed under section of this title article 27 to detail counsel in his sole discretion-- A may detail additional military counsel as assistant defense counsel; and B if the accused is represented by military counsel of his own selection under paragraph 3 B , may approve a request from the accused that military counsel detailed under paragraph 3 A act as associate defense counsel. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member. To the maximum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committees on Armed Services of the Senate and House of Representatives. An assistant trial counsel of a special court- martial may perform any duty of the trial counsel. These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made part of the record. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge. The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just. The military judge, or if none, the court, shall determine the relevance and validity of the challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered. **OATHS** a Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for duty, and if such an oath is taken it need not again be taken at the time the judge advocate, or other person is detailed to that duty. **PLEAS OF THE ACCUSED** a If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or

refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Secretary concurrence, be entered immediately whither vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty. Process issued in court- martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the Unites States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Territories, Commonwealths, and possessions.

Chapter 3 : Introduction to Military Justice and Discipline - NVSC - UNM - GradeBuddy

An Introduction to The Uniform Code of Military Justice. The Uniform Code of Military Justice (UCMJ) is essentially a complete set of criminal laws.

Military justice blogs are to blogs as military music is to music. The typical progress of a court-martial conviction is: This process is called direct review. Once direct review is complete a conviction is final. A separate process is called collateral review or a collateral attack, and involves a petition for extraordinary relief. Collateral review is collateral because it exists in addition to the direct review. Collateral review can occur pre-conviction or post-conviction. Some recent examples of collateral review are: *United States, 75 M.* The UCMJ authorizes only one kind of interlocutory appeal: An argument could be made that a 6b petition is interlocutory and not collateral, but I think Article 6b is more properly seen as a limited grant of standing and jurisdiction for a collateral attack by a non-party. Collateral review is not a substitute for direct review. An added layer of complexity for us is that a collateral attack on a court-martial can occur in the federal civil courts and in the military appellate courts. A collateral attack begins with a petition for extraordinary relief in the form of a writ. The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. The commonly-requested writs are the writs of habeas corpus get out of jail, error coram nobis habeas without the jail, mandamus make someone do something, and prohibition make someone stop doing something. The truly-desperate sometimes get more creative with their writ petitions, but the vast majority of collateral reviews of courts-martial involve a request for one of these four writs. The All Writs Act makes collateral review function by authorizing the writ, but it does not create or expand the jurisdiction of a court in any particular case. For the military courts, jurisdiction comes from Articles 6b, 66, and For a post-conviction collateral attack, jurisdiction is based on the sentence. For a pre-conviction collateral attack, the military courts: *United States, 72 M.* So, when considering extraordinary relief, the big questions are whether there is jurisdiction, and whether the writ is necessary and appropriate and not being used as a substitute for direct review this is a simplification in the interest of keeping this post to a manageable length. A general court-martial sentenced Gray to death in CAAF affirmed the findings and sentence in Gray in The Supreme Court denied certiorari in At that point direct review was over and the death sentence could be executed once approved by the President. See Article 71 c 1. President Bush approved the capital sentence in The conviction was then final. *United States, 62 M.* Then came collateral review. Gray filed a petition for a writ of habeas corpus in district court, and a petition for a writ of error coram nobis in the Army CCA. But CAAF had also expressed skepticism in *Loving I* about whether the military courts had jurisdiction to grant habeas in a case that is final under Article Denedo II, U. The CCA then denied the petition on the basis that the alternative of habeas was available. Gray file a writ-appeal at CAAF that was denied without prejudice: On consideration of the writ-appeal petition, it is ordered that said writ-appeal petition is hereby denied without prejudice to raising the issue asserted after the U. District Court for the District of Kansas rules on the pending habeas petition. Appellant fails to show that he is entitled to extraordinary relief. He has a remedy other than coram nobis to rectify the consequences of the alleged errors, namely a writ of habeas corpus in the Article III courts. In particular, in *Denedo* the Supreme Court held that: It also held that: This makes perfect sense, considering how collateral review works. Because there was direct review jurisdiction, there is coram nobis jurisdiction. Put differently, where habeas is available, habeas is preferred. Accordingly, in light of the lack of jurisdiction, the writ-appeal is dismissed with prejudice.

Chapter 4 : Military justice in the field - Very Short Introductions

An introduction to the Military Justice System Posted by: Belly Mark Posted date: February 24, In Justice Among the first stuff that any new recruit soon finds out concerning the military is it is filled with laws and regulations, rules, and rules.

Chapter 5 : Military Justice: A Very Short Introduction by Eugene R. Fidell

All info submitted will be kept confidential and private. We will contact you via e-mail or phone for a free initial consultation with a military defense lawyer.

Chapter 6 : Military Justice: A Very Short Introduction (Book Review)

"Eugene Fidell's Military Justice: A Very Short Introduction is an easy, breezy, but deeply learned read into the broader topic of military justice Every naval officer and senior enlist should read this book.

Chapter 7 : Uniform Code of Military Justice - UCMJ

Military Justice: A Very Short Introduction presents an accessible and honest assessment of the strengths and weaknesses of military justice in both common law countries and those with other legal traditions, with particular emphasis on the United States, the United Kingdom, and Canada.

Chapter 8 : Military Justice: A Very Short Introduction - Very Short Introductions

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Chapter 9 : Introduction to the Military Justice System - The military justice process

Second, Military Justice: A Very Short Introduction is a self-aware book. It includes a glossary, references, a section on further reading, and a.