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MILITARY LAW

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Military Law¹ is a well defined branch of jurisprudence. It is the body of rules and regulations that have been prescribed for the government of the army and navy and for the militia when called into active service. It applies to and includes such rules of action and conduct as are imposed by a state upon persons in its military service with a view to the establishment and maintenance of military discipline.

It is distinguished from martial law in that (1) military law applies only to persons in the land and naval forces while martial law applies to all persons and property within the district subject to it. (2) Military law is a permanent code applicable alike in peace and war while martial law is only temporary and ceases with the necessity which brought it into existence. (3) Military law is a well defined branch of jurisprudence while martial law is not properly law at all but substantially merely the will of the military commander.

It is distinguished from military government, for military government is the military jurisdiction exercised over territory and inhabitants of an enemy's country when held by an army of occupation. Military government takes the place of a suspended or destroyed sovereignty, while martial law or more properly martial rule takes the place of certain governmental agencies which for the time being are unable to cope with existing conditions in a locality which remains subject to the sovereignty.²

SOURCES OF MILITARY LAW.

1. The constitution of the United States is the fundamental source. Congress by the constitution has been given power to

1. Articles of War, Sec. 3 of Army App. Act, Aug. 20, 1916, 39 Stat. L. 619; Military Laws of United States, 5th Ed., 1915; Army and Navy, Vol. 3 Cyc., page 812; Military, Vol. 18, R. C. L., page 1070; Court Martial, Vol. 9, Laws of England 97; Military Law, Vol. 20, Amer. and Eng. Encyc. of Law, 2nd ed., page 615; Military Laws, Vol. 15, 1st ed., Amer. and Eng. Encyc. of Law 390; Army and Navy Corpus Juris, Vol. 5, page 287; Manual of Court Martial, government publication; Davis, A Treatise on the Military Law of U. S., published by John Wiley & Sons; Digest of Opinions, Judge Advocate; Winthrop Military Law and Precedents.

2. See Opinion of Chase in *Ex Parte Milligan*, 4 Wallace (U. S.), page 12, 18 L. ed., page 281.

raise and support armies subject to the limitation that no appropriation of money to that use shall be for a longer period than two years, to provide and maintain a navy and to make rules for the government of both forces.³

II. Statutory Provisions. Congress has legislated in pursuance to the power granted it. It has passed what is known as the Articles of War and the Naval Articles, the Selective Service Law and many other provisions which can be found by reference to the statutes. The Articles of War contain 118 articles⁴ and the Naval Articles comprise 63 articles.⁵

III. Army and Navy Regulations. Rules proclaimed by express authority of congress, by the president as commander-in-chief of the army and navy acting through the secretary of war⁶ and navy is what is meant by army and navy regulations. These regulations must conform to the law, and be uniform and must be applicable to all persons in service under same conditions.

IV. General and Special Orders.⁷ Orders issued by the president as commander-in-chief or by the commanding officers or the war department or any headquarters are the principal source of this source of military law. These are usually temporary and one must consult such orders to be posted to date. They can be found in the files of the commanding officers. They can not conflict with statutory regulations or law nor with regulations issued by superior authority.

V. Customs and Usages of Service. This is the unwritten law of the army and navy. The essential requisites of a valid custom and service are⁸ (1) That it must be long continued. (2) It must be generally known and invariably observed by those who are alleged to be subject to its operation. (3) It must be compulsory. (4) It must not be in opposition to the terms of a statute.

VI. The decisions of the courts and of the president, the secretary of war, and the commanding general and the opinion of the attorney general of the United States and judge advocate general.

3. U. S. Const., Article I, Sec. 8.

4. Section 1342, Revised Statutes U. S.

5. Section 1642, Revised Statutes U. S.

6. U. S. Army Regulations, 1913, corrected to April 15, 1917, War Department Document No. 454.

7. Compilation of General Orders and Bulletins of War Department.

8. Davis. — A Treatise on the Military Law of U. S., page 11.

LOCAL TREATISES ON THE SUBJECT.

No subject in the law has been so prominently brought to the foreground at this time as the subject of military law.

When the government established the Student Army Training Corps in 500 colleges in America, including Marquette, the Committee on Education which had direct supervision of the courses to be pursued by the students inducted into the organization prescribed a course in military law of three hours per week. Treatises and sources of military law were eagerly sought and the experience of the writer demonstrated that in the public library of Milwaukee which contains over 325,000 volumes only two books⁹ were to be found which in any way touched upon the subject and only one was to be found in the Marquette University College of Law Library. The Committee on Education found that government publications were practically exhausted and it set to work getting out new editions and in fact going to the extent of having new books written by eminent authority to meet the situation. All of which demonstrated that our government was not a warring nation but was only prepared for peace.

MILITARY TRIBUNALS.

The military tribunals which have jurisdiction of offenses against the law of the service are:

(1) Military commissions and provost courts for the trial of offenders against the law of war and under martial law.

(2) Court martial, the original of which was the court of chivalry of England. The constitutional power, authority and jurisdiction of a court martial is found in Article I, Section 8 of the constitution, under which congress may provide for the trial and punishment by court martial without indictment or the intervention of a jury of all offenses committed by persons in the military service of the United States and this power is not abridged by the fifth amendment or any other amendment of the constitution.

Court martials are lawful tribunals with authority to finally determine any case over which they have jurisdiction and their proceedings when confirmed as provided are not open to review by the civil tribunals except for the purpose of ascertaining whether the military courts had jurisdiction of the person and

9. Military Government, Birkhimer; Manual of Court Martial.

subject matter and whether although having jurisdiction, it had exceeded its powers in the sentence pronounced.

The court martial, although not a part of the federal judicial system, has all the elements of a court. It has judges to hear the evidence and determine the facts and apply the law. It has parties, prosecutor and defendant. It has pleadings and a formal trial, renders judgment and issues process to enforce it. In short, it does everything within the sphere of its jurisdiction which any judicial tribunal can do to administer justice.

There are three kinds of court martial: General, special and summary. General court martial has the power to try any person subject to military law for any crime or offense punishable by the Articles of War and it may also try any person who by the law of war is subject to trial by military tribunals for any offense or crime in violation of the law of war. It consists of from five to thirteen officers who try the case.

Special court martial has the power to try any person subject to military law except officers or any person subject to military law belonging to a class or classes excepted by the president for any crime or offense made punishable by the Articles of War, except capital offenses, but the limit of punishment is confinement not to exceed six months or forfeiture of six months' pay. No dishonorable discharges can be met out as a punishment by this court. It consists of any number of officers from three to five.

Summary court martial has the power to try any person subject to military law except an officer, a cadet, a soldier holding the privilege of a certificate of eligibility to promotion or a non-commissioned officer who objects thereto or any person excepted by the president for any crime or offense made punishable by the Articles of War, with the limitations upon punishment that it can not punish by a sentence of dishonorable discharge, imprisonment in excess of three months or forfeiture of more than three months' pay.

Court martials are courts of limited special jurisdiction and therefore their organization, powers and mode of procedure must conform to all the statutory provisions relating to their jurisdiction. Their jurisdiction is entirely criminal. Persons belonging to the army and navy are not subject to illegal or irresponsible court martials. In such cases everything which may be done is void, not voidable, but void and civil courts have never failed

upon a proper suit to give a party redress who has been injured by a civil process or a valid judgment. This does not mean, however, that any irregularity of practice in the trial makes the proceedings void.¹⁰

Court martials, while resembling the civil courts in some respects, are entirely different. (1) They are not part of the judicial system of the federal government. (2) They are called for a special purpose to perform a particular duty, and when the object of its convening has been accomplished the court is dismissed.¹¹ They are temporary and not permanent. (4) Their sentence must be confirmed by the appointing authority. (5) A court martial is not a court of record.¹²

COURT MARTIAL PROCEDURE.¹³

1. Arrest and confinement.
2. Charges and specifications.
3. Convening of court martial.
4. Plea of accused.
5. Trial — evidence.
6. Findings and punishment.
7. Confirmation.

It will be impossible in the space allotted to this article to go into the details of the procedure but merely to refer as above to the general steps in procedure.

COURTS OF INQUIRY. A court of inquiry is called to inquire and examine into the transactions of or accusations or imputations against officers or soldiers. These courts are courts of inferior jurisdiction and their findings are advisory. They perform no judicial function but are convened only for the purpose of informing as to the facts involved in the injury.

The proceedings are in no sense a trial of an issue of an accused person.

JUDGE ADVOCATE.

The extensive response by lawyers to the call for experienced lawyers needed in the military service must be a source of gratifi-

10. *Dynes vs. Hoover*, 61 U. S., page 81; *Denning vs. McClaughny*, 113 Fed. 650; *McCloughny vs. Denning*, 186 U. S., page 63; *Mullen vs. U. S.*, 140 U. S., page 240; Ex parte Tucker, 212 Fed., page 569, and A. and W. 37.

11. *Brooks vs. Daniels*, 22 (Pickering) Mass., page 498.

12. Ex parte Watkins, 3 Peters (U. S.) 143; 7 Fed. 650.

13. Memoranda Court Martial Procedure by George C. Johnson.

cation to the legal profession of the country. The number of applications far exceeded 4,000. For an army of a million only about 150 lawyers are needed.

For each general or special court martial the authority appointing the court shall appoint a judge advocate and for each general court martial one or more assistant judge advocates when necessary.¹⁴

The judge advocate prosecutes in the name of the United States and under the direction of the court prepares the record of the proceedings.¹⁵

He does more than the district attorney in the civil law. He is not only the prosecuting officer, but he may also assist the accused and he is the legal advisor of the court.¹⁶

14. A. W. 11.

15. A. W. 17.

16. M. C. M. 94; 195 Winthrop 262-303.

FINANCING MUNICIPAL EXPENDITURES

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This article does not attempt to go exhaustively into the subject of municipal finance or treat it otherwise than in its practical application. It is limited to a discussion of a few questions which are of vital importance and common to all municipalities. There is no uniform legislation among the various states pertaining to municipalities the same as, for instance, in the laws of sales, negotiable instruments and other kindred subjects; even the constitutional provisions of states differ as to the law of municipalities. However, it will be necessary in the course of the article to refer to legislative restrictions on municipalities and for this purpose the constitution and laws of Wisconsin will be used for illustration. The laws governing the financing of Wisconsin municipalities are considered, by investors in municipal securities, as being on a par with the laws of any of our states.

The questions of municipal finance center around what expenditures shall be made and how money shall be secured to meet such expenditures.

The expenditures of a municipality are determined by its legislative body. The methods of determining expenditures differ