

J U R I S D I C T I O N

I. Applicability of Article 3(a) to persons having military status:

a. Background cases:

1. U. S. ex rel. Hirsberg v. Cook, 336 U.S. 210 (1969)

b. When does military status terminate

2. U. S. v. Scott, 29 CMR 462 (1960)
3. U. S. v. Brown, 31 CMR 279 (1962)

*Here is actually the uninterrupted status as a person subject to the code.

*Is a Reservist subject to court-martial status?

Legislative history of Article 3(a) U.C.M.J.
Hearings before a Subcommittee of the Committee
on Armed Services, House of Representatives,
81st Congress, 1st Session on H.R. 2498, at 617.

- #### c. Applicability of Article 3(a) to persons having military status:
- U. S. v. Gallagher 21 CMR 435 (1956)

Requirements of Article 3(a) must be met:

- U. S. v. Fryer, 29 CMR 416 (1960)
U. S. v. Steidley, 33 CMR 320 (1963)

These two conditions (3a) need not exist to support continuing jurisdiction despite intervening discharge on the "uninterrupted status" exception; for example:

- U. S. v. Noble, 32 CMR 413 (1962)
U. S. v. Martin, 28 CMR 202 (1959)

*Judge Ferguson believes that a strict application of Article 3a provides the only basis for jurisdiction when the offenses occurred before the discharge and reenlistment:

- U. S. v. Noble, 32 CMR 413, 46, (dissenting opinion)

Uninterrupted Status:

- a. Background 116 MEM
- b. Dig of Op. JAG 1912-1940, 369(3) at 181
- c. Exceptions: U.S. v. Solinsky, 7 CMR (1953)
U.S. v. Noble, 32 CMR 413 (1962)

When is military status "continuing"?

1. Was discharge and reenlistment process merely the substitution of one obligation to serve for another?

NOTE:

2. If the accused had completed his obligation under his term of enlistment and was entitled to return to civilian life, a DA FAN 27-174 short form discharge del'd after reenlistment would not afford continuing jurisdiction.

Example: U.S. v. Solinsky; U.S. v. Noble

Continuing jurisdiction - Commencement of Action

(check case) Mansburger 20 CMR 449 (1955)