

Interdiction

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

a. back ground cases:

1. U.S. ex rel. Huisberg v. Cook
336 U.S. 210 (1949)

b. When does military status terminate

2. U.S. v. Scott, 29 CMR 462 (60)

3. U.S. v. Brown, 31 CMR 279 (62)

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

⊙ Q: is a reservist subject to martial status

Legislative history of Art 3(a) U.C.M.T
Hearings before a Subcommittee of
the Committee on Armed Services,
House of Reps, 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
(56)

Regiment of Artillery 3rd must be met:

U.S. v. Fagan, 29 CMR 416 (66)
U.S. v. Stedley, 33 CMR 320 (63)

There too conditions (3a) need not exist to support continuing jurisdiction despite intervening discharge on the "interrupted status" exception for example:

U.S. v. Noble, 32 CMR 413 (60)

U.S. v. Maden, 28 CMR 202 (59)

① Judge Ferguson believed that a refusal of Article 3a provided the only basis for jurisdiction when the offense occurred before the discharge and re-enlistment:

U.S. v. Noble, 32 CMR 413, 416 (clearing opinion)

Uninterrupted Status:

a. back guard 11b MCM

b. Div of O.P. TAG 1912 - 1940, 5369(3)

of 181

c. Exception:

U.S. v. Schunk, 7 CMR 29

(53)

U.S. v. Noble, 32 CMR 413 (60)

When is military status "continuing"?

① Q: 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 terms
of enlistment and was entitled
to return to civilian life, a
short form discharge delivered
after re-enlistment, would
NOT afford continuing
jurisdiction

WA RAM 27-174

examples:

U.S. v. Solinsky

U.S. v. Noble

Continuing Jurisdiction - Commencement of
Prosecution
check case ② Mansburger 20 CMR 449 ('55)

Jurisdiction

A. facts:

1. enlistment dates as pursuant to statutory enlistments for time / no less time is as reservant goes home
2. served his time was to be ~~discharged~~ separated 10 Jan '70 pursuant to his enlistment agreement

MCM "Presidential Act" ~~allows~~
grants jurisdiction and
or continuing jurisdiction
to courts-martials -
has jurisdiction as to offenses
not accused.

Jurisdiction:

Prisoners:

Rogan ; 14:119 ; 33:331
Peterson 14:93 ; 33:305
Bumey 6:776 ; 21:98

Constructive enlistment & or extension:
Downs 3:90 ; 11:90
Scheunemann 34:059