

ucm5

Military Law UCMJ.

Elements of common offence.

I. Article 80

- A. Specific intent to commit certain offence
- B. Directed act toward the completion of the offence

II. Article 86

- A. Absence without authority

1. Unit place + duty.

2. By own fault

3. Intent not element

- B. Failure to report report

1. Proper authority

2. Specific time or place for duty

3. By own fault

- C. Absence with intent to avoid maneuver

1. Proper authority

2. By own fault.

III Article 92 Failure to obey orders

- A. General order or reg.

1. Knowledge

2. Must be lawful.

3. Other lawful orders.

1. That have knowledge

2. Must be lawful.

I. Resisting Apprehension (Article 95) A

A. Physical act.

1. Assault upon M.P.
2. Flight.

B. Knowledge of Apprehension

C. Resistance before Apprehension complete.

II Escape from custody. (95) B

1. Escape after apprehension
2. Or Attempted Escape if he doesn't get away.

III Drunk Driving Article (3)

A. Drunkenness

1. Intoxicated enough to impair mental & Phys. change.
2. Though use of Alcohol or drugs.

B. Operation of vehicle

1. All that is needed is engine on
2. If anything is qualified (rowboat etc)

C. Reckless driving

1. Disregard for safety of others
2. Must be gross or high degree.

Military Law U.C.M.J.

III Larceny Article 121

- A. Wrongful taking
- B. Property of another
- C. With intent to permanently deprive property of owner.

IV Wrongful Appropriation (art. 121 Par A)

- A. Wrongful taking
- B. Property of another
- C. Only borrowing planning to return article.

VII Assault (art 128)

- A. Attempt or offer to do harm
- B. Overt Physical Act.
- C. Apparent ability
- D. Putting in reasonable fear
- E. Without legal excuse
- F. Aggravated Assault. (weapon)

VIII Burglary (art. 129)

- A. Breaking & Entry
- B. Must be in night
- C. Someone must live there } Burglary only
- D. Must have intentions of violating 118 to 127

IX Housebreaking

- A. Unlawful entry
- B. Building or structure (non residential)
- C. With intent

XII

Artical 131 General Article

- A. Adultery
- B. Abusing an animal
- C. Unlawful entry (Not burglary or housebreaking)
- D. Fleeing from scene of accident
- E. Indolence
- F. Disorderly, & drunk
- G. Uniform Violation
- H. False Pass

XIII

Entrapment.

- A. Creating commission of a crime
- B. For purpose of Apprehension
- C. Constitutes a defense for accused.

Military Law U.C.M.J.

Court-martials

M.P. in Court

- I. A Legal Duty
- II Obtain court-martial Information
- III Review Facts of case
- IV Uniform Appearance.

Testifying

Summary 1
Special 13
General 15

CAPT MAJ. Lt.

DC
ACC
ASST
DC

WITNESS

TC
ASS
TC

SUMMARY SHEET

1. The Military Policeman As A Witness In Court.

- a. Testifying - a legal duty.
- b. Preparation prior to appearing at court-martial.
 - (1) Obtain name of accused and nature of charge.
 - (2) Review records at military police headquarters.
 - (3) Refresh memory from notes taken at scene.
 - (4) Insure that your appearance is outstanding.
 - (a) Class "A" uniform must be clean and pressed.
 - (b) Brass and shoes must be highly shined.
 - (c) Fresh haircut and shave.
 - (d) MP gear should not be worn.

2. Correct Manner Of Appearing As A Witness In Court.

- a. Approach court in a military manner.
- b. Salute president of court and report.
- c. Face trial counsel, raise right hand and be sworn.
 - (1) Oath.
 - (2) Or affirmation.
- d. Sit erect in witness chair.
- e. Examination by counsel.
 - (1) Direct examination.
 - (2) Cross examination.
- f. Testifying.
 - (1) Remain cool and alert.
 - (a) Do not become excited.
 - (b) Avoid anger.
 - (2) Speak clearly.
 - (3) Be impartial.
 - (a) Your duty to present facts.
 - (b) Not your duty to convict or acquit.
 - (4) Avoid conflicting statements.
 - (a) Danger of impeachment.
 - (b) Possibility of perjury.
 - (5) State the truth.
 - (6) State facts.
 - (7) Give opinions only when asked.
 - (8) Refresh memory from notes.
 - (a) With permission of court.
 - (b) Only if absolutely necessary.
 - (c) Testify from refreshed memory.
 - (d) Do not read from notes.
- g. Departure from courtroom - upon completion of testifying.
 - (1) Salute president of court when excused.
 - (2) Make about face.
 - (3) Leave courtroom in a military manner.

- (4) Dismissal.
 - (a) Permanent - may return to unit.
 - (b) Subject to recall - remain in witness room.
 - (c) Do not discuss case in either event.
- h. Types of military court.
 - (1) Summary court.
 - (2) Special court.
 - (3) General court.

SUMMARY SHEET

1. Constitutional Prohibition Against Unreasonable Searchers and Seizures.
 - a. Fourth Amendment.
 - (1) Prohibits unreasonable searches and seizures.
 - (2) Evidence obtained by unreasonable search and seizure.
 - (a) Inadmissible in Federal Court.
 - (b) Inadmissible in court martial.
 - b. Fourth Amendment is applicable to the person and property.
2. Grounds For Reasonable Searches And Seizures.
 - a. Authorization of Commanding Officer.
 - (1) Limited to area under his jurisdiction.
 - (2) Oral or written.
 - (3) Exception - US mail in postal channels.
 - b. Incidental to a lawful apprehension.
 - (1) Search of male.
 - (a) His person.
 - (b) Property in immediate possession.
 - (2) Search of female.
 - (a) Her person - unauthorized.
 - (b) Property in immediate possession.
 - c. Prevent disposal of criminal goods.
 - (1) Reasonable belief offense committed.
 - (2) Warrant or other authorization unnecessary.
 - (a) If not immediately or reasonably available.
 - (b) Not obtainable in time to act.
 - d. Consent.
 - (1) Must be freely given.
 - (2) Limited consent.
 - (3) Search of female prohibited, irrespective of consent.
 - e. Search warrant.
 - (1) Off-Post quarters - search warrant required.
 - (2) Civil Police:
 - (a) Procures search warrant.
 - (b) Serves warrant.
 - (c) Conducts search.
 - (d) Makes seizure.
 - (3) Military police accompany:
 - (a) Only on orders of superiors.
 - (b) To identify person or property seized.
 - (c) Aid in execution of warrant - unauthorized.
 - (4) Search warrant not required on-post.
 - f. Public place.
 - (1) Only portion open to public.
 - (2) Probable cause.
 - (3) Property subject to legal seizure.

3. Evidence Obtained By Illegal Search And Seizure.

- a. Derivative evidence.
 - (1) Inadmissible, if obtained illegally.
 - (2) Federal court or court-martial.
- b. Exploratory search.
 - (1) Evidence inadmissible.
 - (2) Federal court or court-martial.

4. Article 31, UCMJ, Self-Incrimination.

- a. Privilege against self-incrimination.
 - (1) Right not to make statement.
 - (2) Right to remain silent.

5. Advising Accused or Suspect of His Rights.

- a. Explanation of rights.
 - (1) Offense of which accused or suspected.
 - (2) Right not to make a statement.
 - (3) Use of any statement made.
 - (4) Right to counsel.
- b. Advising of rights.
 - (1) Prior to questioning.
 - (2) Suspect or accused.

6. Immaterial and Degrading Statements.

- a. Privilege against self-degradation.
 - (1) Statements not material to issue.
 - (2) Degrading statements.
- b. Privilege extends to all persons.

7. Effect of Coercion, Unlawful Influence or Inducement.

- a. Privilege against coercion, unlawful influence or inducement.
- b. Statements made spontaneously - regarded as voluntary.
 - (1) If without urging.
 - (2) Without interrogation or request.

8. Obtaining of Body Fluids.

- a. Obtaining of body fluids.
 - (1) Blood samples and urine samples.
 - (a) Against will of person - inadmissible.
 - (b) Order - void.
 - (c) Consent.
- b. Consequences - deliberate violation of Article 31.
 - (1) Evidence inadmissible.
 - (2) Court-martial.

Military Law UCMJ

Search & Seizure

As part of or in other words our search & Seizure law comes partly from the 4th amendment to the constitution on any military base all people are subject to search & Seizure. The Co. of a unit has the power to search his company. the postal Inspector can open the mail in the post office. Always search when you make an apprehension. He must have permission from the C.G. to search homes or guest house on the base off base civilian police must serve the warrant and we can watch the search and the civilian police can turn goods over to us. If searching barracks you must have permission from the Co. If permission is given you can search on any public place, but only the part that's open to the public.

Punishment is 10 yrs - 20 yrs

SUMMARY SHEET

1. Four Types of Jurisdiction.

- a. Military law.
- b. Martial law.
- c. Military government.
- d. International law.

2. Article 2, Uniform Code of Military Justice.

- a. Personnel subject to military law.
 - (1) Regular components.
 - (2) Cadets.
 - (3) Reserve personnel.
 - (4) Retired regulars.
 - (5) Military prisoners.
 - (6) Coast, Geodetic Survey and Public Health Service Personnel.
 - (7) Prisoners of War.
 - (8) Persons serving with Armed Forces, in time of war, in the field.

3. Authority of Military Police On and Off Post.

- a. Exclusive jurisdiction.
 - (1) Law applicable:
 - (a) Federal and Military Law.
 - (b) State law inapplicable.
 - (2) Court jurisdiction:
 - (a) Federal Court and U.S. Commissioner.
 - (b) Military Court.
 - (c) State Court - no jurisdiction.
 - (3) Police Authority:
 - (a) Federal agents and military police.
 - (b) State police - no authority.
- b. Concurrent jurisdiction.
 - (1) Law applicable:
 - (a) Federal and military law.
 - (b) State law.
 - (2) Court jurisdiction:
 - (a) Federal Court and U.S. Commissioner.
 - (b) Military Court.
 - (c) State Court.
 - (3) Police authority:
 - (a) Federal agents and military police.
 - (b) State police.

4. Posse Comitatus Act.

- a. Posse Comitatus Act.
 - (1) Manpower or force of a country:
 - (a) Available to any law enforcement officer.
 - (b) In need of assistance.
 - (2) Posse Comitatus Act.
 - (a) Prohibits use of Army or Air Force to enforce civil law.
 - (b) Inapplicable to Navy and Marines.
- b. Penalty for violation of Posse Comitatus Act.
 - (1) Individually or collectively.
 - (2) \$10,000 fine and/or two years imprisonment.

SUMMARY SHEET

1. Definition and Elements of Legal Apprehension.

- a. Definition of apprehension.
 - (1) Apprehension - taking into custody of a person.
 - (2) Restraint of person's freedom.
 - (3) Illegal apprehension - consequences.
 - a. Possible injury or death.
 - b. Assault, if force used.
 - c. Creates right of self-defense.
 - d. Civil or criminal action.
- b. Elements of a legal apprehension.
 - (1) Reasonable belief.
 - a. Crime has been committed.
 - b. Person being apprehended committed the offense.
 - (2) Authority.
 - a. Military policeman on duty.
 - b. Person subject to UCMJ.
 - (3) Knowledge of apprehension.
 - (4) Custody.

2. Authority to Apprehend.

- a. Article 7, UCMJ.
 - (1) Officers and warrant officers.
 - (2) Petty officers.
 - (3) Non-commissioned officers.
 - (4) Specialists and EM below NCO rank.
 - a. Guard duty.
 - b. Police duty.
 - (5) Military police on duty.
- b. Citizen's arrest.
 - (1) Felony.
 - (2) Misdemeanor amounting to a breach of the peace.
 - (3) Committed in presence.

3. Protective Custody and Detention for Questioning.

- a. Protective custody - a form of protective assistance - not an apprehension.
 - (1) To prevent discredit to service.
 - (2) To protect from violence or injury.
 - (3) Insufficient funds.
 - a. Travel.
 - b. Subsistence.
- b. Detention for questioning.
 - (1) Investigative reasons (examples).
 - a. Suspicious person.
 - b. Civilian dressed in military uniform - no identification.
 - c. Routine pass check.
 - d. Civilian on-post - causes traffic accident.
 - (2) Reasonable length of time.

4. Use of Force in Effecting Apprehension.

- a. Use of force - misdemeanor.
 - (1) Any force necessary, short of serious bodily injury.
 - (2) Force must be reasonably necessary.
- b. Use of force - felony.
 - (1) Any force necessary, including death.
 - a. Person committing a felony.
 - b. Prevent commission of felony.
 - c. Prevent escape of felon.
 - (2) Force must be reasonably necessary.
- c. Considerations in use of force.
 - (1) Degree of seriousness of felony.
 - (2) Injury to innocent bystanders.
- d. Use of unnecessary force.
 - (1) Apprehension may be resisted (right of self-defense).
 - (2) Constitutes assault.
 - (3) Possible consequences:
 - a. Serious injury or death.
 - b. Civil Action.
 - c. Court-martial.

①

UCMJ

The UCMJ came in for it's 1st because of the fact that the services at that time had to ~~the~~ come in with different punishments etc. from 1787 to 1800. So it is a revised Title Manual for court martial.

Martial Law - is asked for by the governor or cabinet, then the President or cabinet will put the area under martial law. or if federal property is damaged and local forces can't help the destruction of such. We only enforce federal laws

Article II - * National guard, and E.R's don't come under our jurisdiction unless at summer camp or there Gnts. training.

Geographic survey people ^{etc.} and retired persons and retired personal are also under our jurisdiction. We can take in another service also

Law of War - Hague & Geneva conventions Articles 45 to 67

* But when area is under martial law all local laws are federal.

Posse Comitatus Act.

No military personal may make apprehension (Citizens arrest) unless in case of loss or injury of life, personal property damage ~~or~~ or loss of such.

Suggested, you mind your own business because you'll be in jail. If you do make an arrest you cannot use government property you have.

If someone fires at you you may fire back only if they fire at you first.

②

U.C.M.J.

- A. Definitions of Apprehension
- B. Elements of a valid Apprehension
- C. Authority to Apprehend
- D. Protective Custody
- E. Detention for Questioning
- F. Use of force.

Article 91 is for illegal Apprehension it puts you in a bind if you do it.

Remember when off duty, you cannot ~~Apprehend~~ anyone so. ■

Article 93 Excessive force (Jail for you, D.D.)

* If some one hits you etc. and gives up in front of witnesses (of course you will not strike him) but once out of sight its possible that he may fall Apprehension

- 1. Taking into custody of a person
- 2. Restraint of a person's freedom of movement.
- 3. Results of illegal Apprehension

D.D.

Citizens Arrest

- A. Felony
- B. Misdemeanor
- C. Committed in your presence

* If all the below are done there will be no trouble

I Legal Requirements

A Reasonable belief

1. Crime has been committed

2. Person committed crime

II B. Authority

1. You're on duty

2. Person Subject to UCMJ

II Other Requirements..

C. Knowledge

1. Person has been told why arrest.

2. Custody (Control of the individual)

A. Article 7 UCMJ

1. Officers & Warrant officers, petty officers, N.C.O.s (not Spec 4) may always make arrest (below E4 (not cpl.) only on guard or M.P. duty.

2. So if an NCO or officer are there and did nothing report them.

Protective Custody

- * a. Form of protective assistance not an apprehension.
 - 1. Prevent discredit of service
 - 2. Protect member from violence or injury.
- * Detention for Questioning
 - 1. Investigate Reasons (Examples)
 - a. Suspicious persons
 - B. Civilian Dress in mil. uniform no ID
 - C. Check a pass.
- * If you shoot only shoot to name.
 - * This will give you a reason for getting around illegal apprehension.