

MILITARY LAW

Spring 2024

LAW 5917

Monday/Wednesday 3:30 PM – 4:45 PM, Hulston Hall Room 3

Instructor: Brent Filbert

Instructor Email: filbertb@missouri.edu

Instructor Phone: (573) 882-5733

Office: Hulston Hall 120C, walk-in or by appointment

Teaching Assistant: Mary Smith, mjsv8v@umsystem.edu

SYLLABUS

REQUIRED MATERIALS: Schenk, Modern Military Justice Cases and Materials, **3rd Edition**. This textbook is available through the University Bookstore or through other platforms like Amazon. You may purchase the digital e-book if you prefer. The ISBN for the required textbook is 978-1-68467-129-8. Supplemental readings are available on Canvas.

LEARNING OUTCOMES: This course focuses on military justice in the United States armed services. Military justice systems of other nations will also be studied to compare with the system of the United States military. Topics will include the history and development of military law; roles of the commander; unlawful influence; constitutional rights of military personnel; court-martial jurisdiction, procedure, and trial; military crimes and defenses; sentencing and punishment; appellate procedure; and summary (nonjudicial) proceedings. No prior experience in the military or with military justice is necessary for this course.

COMMUNICATION WITH STUDENTS: I will frequently use email (and Canvas) for class announcements and reminders. Accordingly, it is essential that you use and regularly check your email account. You are accountable for any information I share through these modalities. My schedule frequently varies from week to week. Therefore, I will not hold official office hours. However, I have an “open-door” policy, and you are welcome to stop by my office in Hulston Hall 120 any time my door is open. You may also contact me via email at filbertb@missouri.edu if you would like to arrange an individual meeting.

ATTENDANCE: You are allotted two unexcused absences. I recognize that situations can occur, however, that preclude attendance. Some absences may be excused. Please contact me if you anticipate missing a class meeting. Attendance will be taken each class by the Teaching Assistant based on the seating chart.

DISABILITY ACCOMMODATIONS: If I can reduce disability-related barriers to the course and you feel comfortable sharing your needs with me, please feel free to contact me in-person or by email. Some accommodations require time to provide, so the earlier I know about them, the better. If you need accommodations related to the format or requirements of this course, if you have emergency medical information, or if you need to make arrangements in case the building must be evacuated, please let me or Dean Trachtenberg know as soon as possible. If disability-related accommodations are necessary, please contact the Law School Associate Dean or Registrar. You may also register with the MU Disability Center,

S5 Memorial Union, 882-4696. Please note that the University of Missouri School of Law does not rely on the Disability Center for the administration of exams to students in need of accommodation; but rather handles accommodation internally. For other resources for students with disabilities, please see “Disability Resources” on the University of Missouri website.

GRADING AND CLASS REQUIREMENTS: Starting the third week of class, a student will present at the beginning of each class regarding the assigned topic and reading. I will provide more detail on the presentations on the first day of class. A paper of at least 15 pages is required (one-inch margins, double-spaced except for indented matter and footnotes; Bluebook-compliant citations; numbered pages). A one-page description of your topic is due by the start of class on February 14, 2024, and the paper itself is due at the end of exam period on May 10, 2024. Extensions of time are strongly disfavored. Come to class, be prepared, and speak up. Grades are a function of attendance, preparation, classroom participation, presentations, and the paper.

CLASSROOM ETIQUETTE: Do not use your computer or cell phone for purposes that are unrelated to class. You may use your computer or tablet for notetaking. Please turn off computer and cell phone audio, ringers, buzzers, etc.

ILLNESS/COVID: Please do not attend class if you feel ill or if you believe you have been exposed to COVID. If you miss class due to illness or any excused reason and do not understand the material you missed, please feel free to reach out to the Teaching Assistant, Mary Smith.

ACADEMIC INTEGRITY: Academic integrity is fundamental to the activities and principles of the School of Law. All members of the law school community must be confident that each person’s work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The law school community regards breaches of the School of Law’s Honor Code as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or whether something might be seen as a form of cheating, consult the course instructor. Please understand that the instructor will follow university procedures on cases of academic dishonesty, and in such cases it may be necessary to assign a failing grade for the assignment or even the entire course.

MENTAL HEALTH: The University of Missouri is committed to supporting student well-being through an integrated network of care, with a wide range of services to help students succeed. The MU Counseling Center offers professional mental health care and can help you find the best approach to treatment based on your needs. Call to make an appointment at 573- 882-6601. Any student in crisis may call or go to the MU Counseling Center between 8:00–5:00 M-F. After hours phone support is available at 573-882-6601.

INTELLECTUAL PLURALISM: The University community welcomes intellectual diversity and respects student rights. Students who have questions or concerns regarding the atmosphere in this class (including respect for diverse opinions) may contact Dean Litton or Associate Dean Trachtenberg, the Director of the Office of Academic Integrity, the MU Equity Office, or equity@missouri.edu. All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of the course.

ASSIGNMENTS: SPRING 2024

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| Class 1, 1/17 | Class Introduction and Administrative Matters |
| Class 2, 1/22 | History and Development of Military Justice. Naval Law, Chapter 1 (on Canvas). |
| Class 3, 1/24 | Overview of the Military Justice System. Modern Military Justice, Chapter 1, pp. 1- 31. |
| Class 4, 1/29 | Overview of the Military Justice System. Modern Military Justice, Chapter 1, pp. 31-72. |
| Class 5, 1/31 | Nonjudicial Procedures. Modern Military Justice, Chapter 3; Naval Law, Chapter 4 (on Canvas). |
| Class 6, 2/5 | 2022 NDAA Changes to Commanders Referral Authority. Eleanor T. Morales, John W. Brooker, <i>Restoring Faith in Military Justice</i> , 55 Conn. L. Rev. 77 (2022); 10 U.S.C. § 801. |
| Class 7, 2/7 | Self-Incrimination. Modern Military Justice, Chapter 4, pp. 163-172; Cases and materials on Canvas. |
| Class 8, 2/12 | Search and Seizure. Modern Military Justice, Chapter 4, pp. 187-205; Cases and materials on Canvas. |
| | Evidentiary Issues in Military Justice. Materials on Canvas; Cases and materials on Canvas. |
| Class 9, 2/14 | Apprehension and Restraint; Pretrial Confinement and Punishment. Modern Military Justice, Chapter 4, pp. 172-182; Cases and materials on Canvas. |

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| Class 10, 2/19 | Pretrial Procedures. Modern Military Justice, Chapter 5, pp. 226-243. |
| Class 11, 2/21 | Motions Practice. Modern Military Justice, Chapter 7, pp. 265-301. |
| Class 12, 2/26 | Findings and Sentencing. Modern Military Justice, Chapter 8, pp. 309-336. |
| Class 13, 2/28 | Death Penalty in the Military. Modern Military Justice, Chapter 9, pp. 340-371; Cases and materials on Canvas. |
| Class 14, 3/4 | Post Trial Procedures. Modern Military Justice, Chapter 10, pp. 380-426. |
| Class 15, 3/6 | Appellate Procedures and Practice. Modern Military Justice, Chapter 11, pp. 430-444; Cases and materials on Canvas. |
| Class 16, 3/11 | Military Crimes Overview and Uniquely Military Crimes. Modern Military Justice, Chapter 12, pp. 454-526; Cases and materials on Canvas. |
| Class 17, 3/13 | Inappropriate Conduct Offenses. Modern Military Justice, Chapter 13, pp. 528-572. |
| Class 18, 3/18 | Sex Offenses. Modern Military Justice, Chapter 14, pp. 573-605. |
| Class 19, 3/20 | Papers Preparation Class |
| Class 20, 4/1 | Military Defenses. Modern Military Justice, Chapter 10, pp. 610-678. |
| Class 21, 4/3 | Special Victims Counsel in the Military. Modern Military Justice, Chapter 2, pp. 72-84; Cases and materials on Canvas. |
| Class 22, 4/8 | Freedom of Speech and Conscience. Cases and materials on Canvas. |

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| Class 23, 4/10 | Courts of Inquiry. Modern Military Justice, Chapter 16, pp. 715-722. |
| Class 23, 4/15 | Military Justice During Combat Operations. Cases and Materials on Canvas. |
| Class 24, 4/17 | Government Ethics. Naval Law, Chapter 6 (on Canvas); Cases and Materials on Canvas. |
| Class 25, 4/22 | Military Justice Systems in Other Nations. Materials on Canvas. |
| Class 26, 4/24 | Papers Preparation Class. |
| 5/10 | Papers Due by 4:00 P.M. |