

MILITARY LAW: SYLLABUS

Spring 2023

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Class location: Room ____, John M. O'Quinn Law Building (_____ Floor)

Class schedule: Mondays, 5:30-7:30pm

COURSE INFORMATION

The Military Law course introduces students to both topics in military criminal justice and operational law. This course examines the statutory and regulatory framework of the U.S. military justice system and the Uniform Code of Military Justice. Lecture will provide an overview of constitutional issues and case law analyzing the legal issues in the military system of criminal jurisprudence. The course will further address operational law in the military context with emphasis on the law of armed conflict and international humanitarian law.

The goal of the course is to serve as a primer for the students understanding of the laws governing military justice and operational law. As such, each topic will begin with the text of the underlying constitutional provision and/or text of the relevant statute, and finally the body of case law related to each topic.

CLASS MATERIALS

There is no material to purchase for this course. The assigned material includes sections of the Constitution and its amendments, statutes, law review articles, and cases available to students through Lexis and Westlaw. Materials will be provided to students at least one week prior to scheduled classes via SharePoint and/or via e-mail.

ATTENDANCE

Classes will be held at the new John M. O'Quinn Law Building in a designated classroom TBD, with half of the course instruction through remote presentation and half through in-person instruction. In accordance with UHLC policy, students must attend at least 80% of regularly scheduled classes. Any student unable to attend scheduled in-person class sessions will coordinate with the instructor and will be given access to remote-in via Zoom. Given the unpredictability of the COVID-19 pandemic, students

should attempt to notify the instructor of the need for individual remote access via Zoom at least 24 hours in advance.

If you are experiencing any COVID-19 symptoms that are not clearly related to a pre-existing medical condition, do not come to class. Please see Student Protocols for what to do if you experience symptoms and Potential Exposure to Coronavirus for what to do if you have potentially been exposed to COVID-19.

COVID-19 INFORMATION

Students are encouraged to visit the University's COVID-19 website for important information including diagnosis and symptom protocols, on-campus testing, and vaccine information. Please check the website throughout the semester for updates.

VACCINATIONS

Data suggests that vaccination remains the best intervention for reliable protection against COVID-19. Students are asked to familiarize themselves with pertinent vaccine information and to consult with their health care provider. The University strongly encourages all students, faculty, and staff to be vaccinated.

OFFICE HOURS

Office hours will be available Monday-Friday by appointment. To allow the course instructor time for flexibility in scheduling, please request appointments at least 24 hours in advance.

CLASS REQUIREMENTS & UHLC GRADE POLICIES

This course will require extensive student participation. Accordingly, each student is expected to attend and actively participate during every class session. Active participation will require that students carefully read all assigned material prior to the start of class so that we can all engage in critical discussion and analysis.

The quality of an individual's class participation will account for 20% of their grade in this course.

Students will also be evaluated through a final exam worth 80% of their grade. Details of the exam will be discussed in class

Please refer to UHLC Clinic Student Manual for additional guidance.

LEARNING OBJECTIVES

During your time in this course, you will develop competence in the following: knowledge and understanding of substantive and procedural law, both regional and international, regarding the conduct and responsibilities of judge advocates who serve in the armed forces; legal analysis and reasoning as it relates to military law as well as written and oral communication related to the legal ethics and professional responsibilities of military lawyers serving both home and abroad; the exercise of proper professional and ethical responsibilities to clients within the military legal system; reflection upon how to integrate conceptions of professionalism and the role of a military lawyer; recognizing trends that influence the law in the military arena; and, other professional skills needed for competent and ethical participation as a member of the legal profession within the civil and military context.

LEARNING OUTCOMES

From taking this course, students will be able to (1) understand the laws governing military justice and operational law, and further appreciate the role military lawyers play in upholding and applying criminal law under the Uniform Code of Military Justice (UCMJ) and international humanitarian law; (2) demonstrate an understanding of the UCMJ, its connection to the United States Constitution and international law; and (3) engage in legal analysis and reasoning, as well as complex problem solving involving international humanitarian law in the military context.

REASONABLE ACADEMIC ADJUSTMENTS/AUXILIARY AIDS

The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact the Justin Dart Jr. Student Accessibility Center (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

COUNSELING AND PSYCHOLOGICAL SERVICES (CAPS)

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus.
http://www.uh.edu/caps/outreach/lets_talk.html

RECORDING OF CLASS

Recording of Class Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

SYLLABUS CHANGES

Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible via email from the course instructor.

PREFERRED NAME(S)/PRONOUN(S)/PREFIX STATEMENT

If you have preferred name(s)/pronoun(s) and/or would favor a particular prefix, we will gladly honor your request. Please advise us early in the semester, so we may make appropriate changes to our records. Any lapses should be attributed to failings of memory, as your preferences are respected in this class.

SENSITIVITY TO CULTURAL ISSUES AND/OR DIVERSITY

The University of Houston does not tolerate any behavior by administrators, faculty, staff, or students, which constitutes unlawful harassment of students on the basis of race, color, sex, religion, national origin, disabled veteran status, age, sexual orientation, or physical or mental disability whether or not the level of conduct rises to unlawful harassment or discrimination. Such forms of harassment have been recognized as discriminatory and as such violate University policy as well as state and federal statutes. Exposure to discrimination, harassment (including sexual and/or religious harassment), and/or insensitivity to cultural issues impairs UH's goals of transmitting and creating knowledge and enhancing student education.

If you feel that you have been exposed to discriminatory practices and/or insensitivity to cultural issues in this or any other setting affiliated with UH, you have the right to have your concerns addressed. One way to address these concerns would be to meet with me, either privately after class or outside of class - by appointment.

TITLE IX/SEXUAL MISCONDUCT

Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

SECURITY ESCORTS AND COUGAR RIDE

UHPD continually works with the University community to make the campus a safe place to learn, work, and live. Our Security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called Cougar Ride that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.

COURSE SCHEDULE (see attached Appendix)

Week/Date	Reading Assignments	Topics
Week 1	See Appendix	Overview of the Military Justice System.
Week 2	See Appendix	Jurisdiction over the Person and Offense.
Week 3	See Appendix	Due Process in the Military Justice System.
Week 4	See Appendix	Double Jeopardy.
Week 5	See Appendix	Military Panels and Unlawful Command Influence.
Week 6	See Appendix	Freedom of Speech and Expression 1.
Week 7	See Appendix	Freedom of Speech and Expression 2.
Week 8	See Appendix	Introduction and Overview of Operational Law in the military context.
Week 9	See Appendix	The Foundations of the Laws of Armed Conflict.
Week 10	See Appendix	International Humanitarian Law and the Geneva Conventions.
Week 11	See Appendix	The Principles of Necessity, Distinction and Proportionality in Armed Conflict.
Week 12	See Appendix	War Crimes and the ICC.

Week 13	See Appendix	Ukraine – A Modern Case Study in the Laws of Armed Conflict.
Week 14	See Appendix	Warfare and the Road Ahead – Drones, Space, Cyberspace, and the impact on the Laws of Armed Conflict.

APPENDIX

Week 1 - Overview of the Military Justice System.

- * U.S. CONST. art. I, § 8, cl. 14.
- * U.S. CONST. art. III, §§ 1–2.
- * 10 U.S.C. §§ 802–03, 816–21, 836 (Articles 2–3, 16–21, 36, Uniform Code of Military Justice, “UCMJ”).
- * *Ortiz v. United States*, 138 S. Ct. 2165, 2170–71 (2018).

Week 2 - Jurisdiction over the Person and Offense.

- * U.S. CONST. art. III, §§ 1–2.
- * U.S. CONST. amends. V, VI.
- * 10 U.S.C. §§ 802–03, 816–21, 825, 832 (Articles 2–3, 16–21, 25, 32, UCMJ).
- * *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 13–23 (1955).
- * *Reid v. Covert*, 354 U.S. 1, 3–5, 19–41 (1957).
- * *Kinsella v. United States ex rel. Singleton*, 361 U.S. 234, 235–39, 242–49 (1960).
- * *Solorio v. United States*, 483 U.S. 435, 436–51 (1987).
- * *United States v. Ali*, 71 M.J. 256, 259–60, 261–65 (C.A.A.F. 2012).
- * *United States v. Begani*, 2019 WL 3542910, *1, *3–10 (N-M. Ct. Crim. App. 2019).

Week 3 - Due Process in the Military Justice System.

- * 10 U.S.C. § 934 (Article 134, UCMJ).
- * *Parker v. Levy*, 417 U.S. 733 (1974).
- * *United States v. Fosler*, 70 M.J. 225, 226–33 (C.A.A.F. 2011).
- * *United States v. Ballan*, 71 M.J. 28, 30–36 (C.A.A.F. 2012).
- * *United States v. Reese*, 76 M.J. 297 (C.A.A.F. 2017).
- * *United States v. Guardado*, 77 M.J. 90 (C.A.A.F. 2017).

* *United States v. Wheeler*, 77 M.J. 289 (C.A.A.F. 2018).

Week 4 - Double Jeopardy.

* U.S. CONST. amend. V.

* *Gamble v. United States*, 139 S. Ct. 1960, 1962–69, 1977–80 (2019).

* *United States v. Gamble*, 694 F. App'x 750 (11th Cir. 2017) (per curiam), aff'd, 139 S. Ct. 1960 (2019).

* *United States v. Schneider*, 34 M.J. 639, 640–643, 644 (A.C.M.R. 1992).

* *United States v. Hennis*, 75 M.J. 796, 802–03 (A. Ct. Crim. App. 2016).

Week 5 - Military Panels and Unlawful Command Influence.

* U.S. CONST. amend VI.

* 10 U.S.C. §§ 825, 837 (Articles 25, 37, UCMJ).

* *United States v. Boyce*, 76 M.J. 242 (C.A.A.F. 2017).

* *United States v. Comisso*, 76 M.J. 315 (C.A.A.F. 2017).

* *United States v. Riesbeck*, 77 M.J. 154 (C.A.A.F. 2018).

* *United States v. Barry*, 78 M.J. 70 (C.A.A.F. 2018).

Week 6 - Freedom of Speech and Expression 1.

* U.S. CONST. amend I.

* 18 U.S.C. § 1382.

* *Parker v. Levy*, 417 U.S. 733 (1974).

* *Greer v. Spock*, 424 U.S. 828 (1976).

* *United States v. Albertini*, 472 U.S. 675 (1985).

Week 7 –Freedom of Speech and Expression 2.

* *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992).

* *Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018).

* *United States v. Wilcox*, 66 M.J. 442, 443–52 (C.A.A.F. 2008).

* *United States v. Meakin*, 78 M.J. 396 (C.A.A.F. 2019).

READING (and Listening) LIST FOR WEEKS 8-14¹

Week 8 – Introduction and Overview of Operational Law in the military context.

- * Major Eddie Gonzalez, Major Ernie Reguluy, Captain Jack Gibson, Captain Kyle Hoffman, *A Day in the Life*, 2018-Oct., Army Law. 28 (2018)
- * Thomas L. Harper, *Hostile Venue: Practicing Law in a Combat Zone*, 43-Feb Pa. Law 41 (2020)
- * Lieutenant Colonel Richard P. DiMeglio, *Training Army Judge Advocates to Advise Commanders as Operational Law Attorneys*, 36 B.C. Int'l & Comp. L. Rev. 1185 (2013)

Week 9 – The Foundations of the Laws of Armed Conflict.

- * PODCAST – JIB/JAB² – The Laws of War Podcast (Episode 1) – <https://jibjabpodcast.com>
- * W. Hays Parks, *Air War and the Law of War*, 32 A.F. L. Rev. 1 (1990).
- * Lieutenant Commander Gregory P. Noone, *The History and Evolution of the Law of War Prior to World War II*, 47 Naval L. Rev. 176 (2000).

Week 10 – International Humanitarian Law and the Geneva Conventions.

- * Amanda Alexander, *A Short History of International Humanitarian Law*, 26 European Journal of Int'l Law 109 (2015).
- * Charles J. Moxley, Jr., John Burroughs, Jonathan Granoff, *Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty*, 34 Fordham Int'l L.J. 595 (2011).
- * Daphne Rechemond-Barak, *Applicability and Application of the Laws of War to Modern Conflicts*, 23 Fla. J. Int'l L. 327 (2011).

Week 11 – The Principles of Necessity, Distinction and Proportionality in Armed Conflict.

- * Major R. Scott Adams, *Power and Proportionality: The Role of Empathy and Ethics on Valuing Excessive Harm*, 80 A.F. L. Rev. 149 (2019).
- * Gabriel Swiney, *Saving Lives: The Principle of Distinction and the Realities of Modern War*, 39 Int'l Law. 733 (2005).

¹ Additional reading material may be added or removed from the present list based upon current events within the international community.

² JIB (*Jus in Bello*) JAB (*Jus ad Bellum*)

* Lieutenant Colonel Mark David “Max” Maxwell, Major Richard V. Meyer, *The Principle of Distinction: Probing the Limits of its Customariness*, 2007-Mar., Army Law. 1 (2007).

Week 12 – War Crimes and the ICC.

* Oona A. Hathaway, Paul K. Strauch, Beatrice A. Walton, Zoe A.Y. Weinberg, *What is a War Crime?*, 44 Yale J. Int’l L. 52 (2019).

* Kristijan Zic, *The International Criminal Tribunal for the Former Yugoslavia: Applying International Law to War Criminals*, 16 B.U. Int’l L.J. 507 (1998).

* Howard S. Levie, *Prosecuting War Crimes Before an International Tribunal*, 2018-Mar., Army Law. 54 (2018).

Week 13 – Ukraine – A Modern Case Study in the Laws of Armed Conflict.

* Peggy McGuinness, Ezra N. Rash, *Understanding International Justice for Atrocity Crimes in Ukraine*, 94-Aug. N.Y. St. B.J. 20 (2022).

* TBD – Dependent on Where the Conflict in Ukraine Stands as of Winter/Spring 2023.

Week 14 – Warfare and the Road Ahead – Drones, Space, Cyberspace, and the impact on the Laws of Armed Conflict.

* Major Jeffrey D. Randall, *Crossing Borders in Cyberspace*, 2021-5, Army Law. 82 (2021).

* Major Thomas R. Burks, *Cyberspace, Electronic Warfare, and a Better Jus Ad Bellum Analogy*, 82 F.F. L. Rev. 1 (2022).

* Lieutenant Colonel Matthew A. Krause, Major Jason C. Coffey, Major Jonathan J. Wellemeyer, *Readying the Road, Future Concepts Preps for Future Conflicts*, 1 Army Law. 7 (2020).

* Dr. Waseem Ahmad Qureshi, *The Changing Face of Warfare n the Hi-Tech World*, 49 Sw. L. Rev. 271 (2020).

* Christopher E. Swain, *Creating Super Soldiers for Warfare: A Look Into the Laws of War*, 17 J. High Tech. L. 105 (2016).