

**NATURAL JUSTICE IN THE ARMED FORCES: AN APPRAISAL  
OF SECTION 9 OF THE ARMED FORCES ACT 1972**

By

Anwar Zamani bin Jusop (2005681481)  
Abdul Jalil Salam bin Muhamad (2005600490)  
Mohd Faizal bin Abdullah (2004614480)

Submitted in Partial Fulfillment of the Requirements  
For the Bachelor in Legal Studies (Hons)

**Universiti Teknologi MARA  
Faculty of Law**

October 2007

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the works of others.

**ABSTRACT**

Mc Cardie J in *Heddon v Evan* observed that, “*Discipline is the soul of the Army. It is the basis of all military efficiency. The dignity and self-respect of officers and privates alike are based upon it. The officer who does not enforce it would lose the respect of his men. The private who does not cheerfully submit to it is unworthy of our high military traditions. National safety depended upon the Armed Forces of the people. The power of those forces rest upon the maintenance of discipline. The plainest patriotism calls for its enforcement on the one hand and a ready submission to its requirements on the other hand*”.

The Armed Forces came into existence with a strong and a strict discipline that must be abided by its members because without discipline, orders from the superior will be taken for granted and with a very much question or justification. Therefore the different set rule of law is needed to promote good order, high morale and discipline among their personnel. Therefore, the military law is a unique set of laws. It is applicable during peace and war.

Someone would only be able to condemn the application of military law, one could only doing that after attaining a basic knowledge about military jurisprudence. Therefore, this research is to make public to be conversant or posses some knowledge from this wide cover area of military law.

## PREFACE

First and foremost, our deepest gratitude is forwarded to God whose guidance and grace is instrumental in making the finalization of this project paper a reality; and revealed to us is the most humble and respected supervisor, Mr Mahindarjit Singh a/l Khazan Singh who has been kind and generous enough in lending us a helping hand throughout the completion of this research. His guidance and assistance shall never be forgotten.

In addition, we also wish to acknowledge the assistance of few other people in helping us completing this project paper. Firstly, we would like to thank all the respondents of the interviews, particularly, our highest appreciation extends to the Armed Forces, which predominantly includes the Chief of Service and all Legal and non-Legal Officers; and also Judge Advocate General. Not to forget Prof Dr Shad Saleem Faruqi in providing his wisdom and meticulous effort in putting us into the right direction until the final day of submission. Special thanks also to all respondents who involved directly and indirectly to our research. Their time and effort in providing us the answers that we seek is very much appreciated.

We would also like to convey our and appreciation to our million thanks for our family, dearest and closest friends for all help and support that made it possible for us to endure any difficulty that we faced along the completion of our work.

## TABLE OF CONTENTS

<i>Preface</i>	ii
<i>Abstract</i>	iii
<i>Table of Contents</i>	iv
<i>Table of Cases</i>	vi
<i>Table of Statutes</i>	ix
<b>CHAPTER ONE : INTRODUCTION</b>	<b>1-7</b>
1.0 General Introduction	1
1.1 Problem Statement	4
1.2 Objectives of Study	5
1.3 Methodology	5
1.4 Limitation	6
1.5 Significance of the Study	7
1.6 Conclusion	7
<b>CHAPTER TWO : LITERATURE REVIEW</b>	<b>8-16</b>
2.0 Introduction	8
2.1 Literature Review	8
2.2 Conclusion	16
<b>CHAPTER THREE : THE APPLICATION OF NATURAL JUSTICE IN THE ARMED FORCES</b>	<b>17-36</b>
3.0 Introduction	17
3.1 Natural Justice	17
3.2 Introduction to Military Law	21
3.3 Summary Trial	23
3.3.1 Summary Trial procedure	23
3.4 Court-Martial	25
3.4.1 Court-Martial procedure	26
3.4.2 Jurisdiction	27
3.4.2.1 Jurisdiction over the administrative power	28
3.4.2.2 Jurisdiction over the categories of offences	28
3.4.2.3 Jurisdiction in relation to the command structure	29
3.4.2.4 Jurisdiction over the subjected persons	30
3.4.2.5 Jurisdiction in relation to statutory limitation	31
3.5 Board of Inquiry	32
3.5.1 Board of Inquiry procedures	34
3.6 Conclusion	36

<b>CHAPTER FOUR : ANALYSIS</b>	<b>37-48</b>
4.0 Introduction	37
4.1 Scope of Analysis	39
4.1.1 Views on Section 9 of Act 77	39
4.1.2 The relevance and the advantages or disadvantages of Section 9 of Act 77	41
4.1.3 The necessity for the rule of natural justice in the Act 77	43
4.1.4 The significance of Articles 132 and 135 of the Federal Constitution to armed forces personnel	44
4.1.5 The observance of rule of natural justice before the dismissal of the armed forces personnel	46
4.2 Conclusion	47
<b>CHAPTER FIVE : RECOMMENDATIONS AND CONCLUSION</b>	<b>49-58</b>
5.0 Introduction	49
5.1 Recommendations	49
5.1.1 The relevancy of Section 9 of the Act 77	50
5.1.2 The term, “without assigning any reason” in Section 9 of the Act 77	51
5.1.3 The relevance of Article 135 and other provision of the Constitution with regard to Section 9 of Act 77	52
5.1.4 Distinguishing the term of “dismissal” and “termination”	53
5.1.5 Constitutional protection under fundamental liberties	54
5.2 Conclusion	56
Bibliography	59-61
Appendices	
Appendix 1: Summary Trial Procedure	62
Appendix 2: The Court-Martial Procedure	79
Appendix 3: Questionnaire	88
Appendix 4: Flow Chart of the “Number 2” Board	94
Appendix 5: Statistics of Dismissal of the Armed Forces Officer under Section 9 of the Armed Forces Act 1972 from Year 2002 until 2007	95