

39. Absence without leave.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) absents himself without leave; or
 - (b) without sufficient cause overstays leave granted to him; or
 - (c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or
 - (d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or
 - (e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or
 - (f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place, prohibited by any general/ local or other order, without a pass or written leave from his superior officer; or
 - (g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there;
- shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

NOTES

1. *Two or more accused should not be jointly charged with an offence under this section.*
2. *Clause (a): The criterion between desertion and absence without leave is intention. Where all the ingredients of the offence of desertion are present except an intention not to return to the service or to avoid some important military duty, the offence will be one of absence without leave or any other offence of this genus e.g., failure to appear at the time fixed at the parade.*
3. (a) *Absence without leave must not be involuntary absence e.g., due to illness or being taken into civil or military custody, whether on surrender or apprehension. However, the mere reporting by an absentee to a provost officer or M.C.O. or the fact that such provost officer or M.C.O. orders the absentee to return to his unit will not terminate the voluntary absence; which will continue to run until the absentee rejoins his unit.*

(b) *To render an absence involuntary there must be some physical impracticability, outside the control of the offender, that prevents his return to his unit. Inability to return to his unit through intoxication which is an offence under [AA.s.48](#) will not make such absence involuntary nor would an inability which arises through lack of money or loss of his railway or other ticket. Further, where the absence without leave was originally voluntary and has by change of circumstances, subsequently become involuntary the offender may be convicted of absence for the whole period. Similarly, an absence that was originally involuntary becomes voluntary, if the offender fails to return to his unit at the earliest practicable moment e.g., failure to return on release from a civil prison.*

(c) *Where the prosecution proves that the accused was absent and that he had not been granted leave, the court may, in the absence of any satisfactory explanation by the accused, infer that the absence was voluntary.*

4. (a) *A court considering a charge under this section should consider "was the accused at the place where his duty required him to be?"*
(b) *An offence under this section is one of absence without leave, and not merely absence. Leave of absence must be notified to the applicant for such leave. A person who has applied for leave, and departs from his unit before it is actually granted, commits the offence of being absent without leave, even though the leave had been granted but not notified to him.*
(c) *When evidence has been given of the accused's absence, or failure to appear at the place required, and that evidence is sufficient to raise an inference that he had no leave of*

absence, then the court may look to the accused to provide evidence, by way of defence, for his "leave", "sufficient cause" or "due cause" as the case may be.

5. (a) For proof of commencement and termination of absence see [note 11 to AA.s.38](#).

(b) The particulars of a charge of absence without leave should state the date when the absence began and terminated. Where the exact hour of the absence is material for the purpose of proving a whole day's absence, as it may be under the provisions of [AA.s.92](#), the hour of the offender's departure and return should also be stated in the particulars of the charge.

(c) Where, for some reason, it is not possible to prove the exact dates of commencement and termination of the absence, but it is possible to show that an absentee was at some place other than his place of duty, at charge under [AA.s.63](#) alleging that he was improperly at one place; whereas his duty required him to be elsewhere may be preferred.

6. Under [AA.s.90\(a\)](#), read with P & A Regs (Officers), an officer automatically forfeits all pay and allowances due to him for every day he absents himself without leave or overstays the period of his leave unless a satisfactory explanation has been given to his CO and has been approved by the Central Govt. [AA.s.91\(a\)](#), read with P & A Regs (OR), makes such deductions also automatic in the case of persons subject to AA other than officers; the CO of such absentee can, however, remit such penal deduction if the absence does not exceed five days; [AR.195\(b\)](#). The penal deductions under [AA.s.90\(a\)](#) and [91\(a\)](#) may be made without the absentee being convicted by court-martial or dealt with summarily under [AA.ss.80, 83](#) or [84](#).

7. Under [AA.s.139\(1\)](#) and [\(2\)](#), a person subject to AA and charged with desertion or attempted desertion may be found guilty of absence without leave but not vice versa. Also see [note 5 to AA.s.38](#).

8. When a person has been absent without leave for 30 clear days or has overstayed his leave without sufficient cause for that period, a court of inquiry will be assembled under [AA.s.106](#). Also see [AR 183](#).

9. Under [AA.s.120\(3\)](#), a CO can try by SCM a NCO or a sepoy under his command for an offence under this clause. For the circumstances when a CO other than a CO of the unit to which a NCO or OR properly belongs, can try an offence under this clause see note (c) to [AA.s.38](#).

10. If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the accused states in his defence any sufficient or reasonable cause for his absence and refers in support to any officer in the service of the Govt. it is the duty of the court to address such officer if it appears that such officer may prove or disprove the accused's statement;

[AA.s.143](#). Failure to comply with this provision may result in annulment of the proceedings.

11. Clause (b).—This offence is basically the same as in clause (a); except that the absence becomes illegal only after the expiry of his authorised leave; whereas under clause (a) the absence is illegal ab-initio.

12. If it is proved that a person subject to the AA. has overstayed his leave, it will be for him to show that he had sufficient cause (e.g., sickness or the unexpected interruption of the ordinary means of transit) for doing so. If, however, any evidence as to the cause of his failure to return is known to the prosecutor, it should be adduced, leaving it to the court to decide as to the sufficiency of such cause.

13. Clause (c)—Charges under clauses (c), (d), (e) or (g) should not ordinarily be preferred as any offence under those clauses must almost invariably amount to an offence under clause (a) and a charge under the latter clause is simple to prove.

14. Without sufficient cause: see [note 13](#) above.

15. Corps—sees [AR 187\(3\)](#).

Department.—see [AA.S.3\(ix\)](#).

Active service.—see [AA.s.3\(j\)](#).

16. Clause (d).—(a) before a conviction can be obtained under this clause, it must be proved that the time was fixed and the place appointed by competent authority, and that the accused was aware of this fact. These facts are sometimes difficult to prove and therefore a charge of absence without leave under clause (a) is usually more practicable. See also [note 13](#) above.

(b) A person who is late for parade commits an offence under this clause, equally with one who is altogether absent.

(c) Absence from a parade etc., through intoxication should not be charged under this section but under [AA.s.48](#) for intoxication. Ignorance of the order for the parade, although exposing the offender to a charge under [AA.s.63](#), for failing to acquaint himself with the order as required by [Regs Army para 324](#), will not render him liable to a conviction under this clause. Where a reasonable misapprehension of the order exists, based on lack of clarity in the terms of the order itself, this may, in certain circumstances amount to a good defence to the charge.

17. Clause (f).—'Camp' includes a bivouac and any quarters, shelter, or other place where troops are temporarily lodged.

18. 'General, local or other order's—The orders specified in this clause are standing orders or orders in writing and applicable continuously over a period of time to persons present in a certain geographical area or in a certain military formation. Ignorance of the order is no excuse if the order is one which the accused ought, in the ordinary course, to know. But a misapprehension reasonably arising from want of clarity in the order is a ground for exculpation. The existence of the order must be proved by producing it or a certified copy where so permissible under [AA.s.142\(4\)](#) on oath/affirmation to the court. A written order cannot be proved by oral testimony. Evidence must also be led to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents.

19. (a) A charge alleging "without a pass or written leave from his superior officer would be a good charge under this clause, since it is a single offence for him to have neither a pass nor written leave. On the other hand, a charge alleging "beyond the limits fixed by general or local orders" would be bad since it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by local orders (see [AR 30](#)).

(b) Without a pass or written leave from his superior officer.—These words are in the nature of an exception, and on being proved that the accused was found beyond fixed limits, it will rest on him to show that he had the proper authority.

20. Superior officer. See [AA.s.3\(xxiii\)](#).