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MILITARY LAW

LECTURE NOTES FOR SENIOR STAFF COURSE QUALIFYING EXAMINATION

Prepared under the direction of

Chief of Army Staff

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NOTE

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THE NIGERIAN CONSTITUTION

INTRODUCTION

1. Every military officer and soldier should be familiar with the Nigerian Constitution. This is so because firstly, he should be more generally enlightened than the average citizens with whom he would have to interact in the performance of his job. Secondly, as a law enforcement agent he should know the extent and limits of his powers so that he can avoid becoming a victim of the law and perform his duties effectively.

2. This topic will generally lead to the sources of military law, and their relation to the Constitution. Only the essential aspects of this subject are brought out. The candidate is expected to read the subject in detail in other manuals, including the references referred to in this chapter.

OBJECTIVES

3. At the end of this chapter the candidate is expected to understand the following:

- a. The legal status of the constitution.
- b. The sources of military law.
- c. The legal status of a soldier.

THE LEGAL STATUS OF THE CONSTITUTION

4. The Constitution of the Federal Republic of Nigeria is the prime law, the ground-norm of all the laws in the nation. **The “Mother of all Laws”**. The Constitution is the law that expresses the general will of the citizens as to how the affairs of their nation should be conducted. It is a product of the

representative of every cultural, economic, religious and other group interest. It is a compromise document that cannot be contravened or altered without adversely affecting the cherished values of the citizens. The Constitution is therefore the supreme law of the land.

DEFINITION OF MILITARY LAW

6. There are several definitions of military law by various writers. These fall into 2 groups; the restricted sense and the comprehensive sense.

a. Those who define military law in a narrow sense see it mainly as follows:

(1) “A system of law which governs the Army of a state enabling discipline to be maintained through trials and punishments by military tribunals”.

(2) “A special code for enforcing discipline on soldiers” (Burge Das Basu).

(3) A book of rules and orders for the discipline of their officers and soldiers together with certain penalties. .

b. In the comprehensive sense however, military law is the whole body of customs that are observed, as well as rules and enactments expressly enacted for the maintenance of discipline and control of service personnel. Military Law includes regulations relating to general administration of the Armed Forces, including such matters as enlistment, conditions of service and welfare.

SOURCES OF MILITARY LAW

7. **The Nigerian Constitution.** The Constitution is the most authoritative source of our military law. The relevant Sections (Secs197-200) are reproduced verbatim at Annex A to this chapter. The Constitution has

expressly directed the establishment of the various branches of the Armed Forces and has assigned them specific tasks. (See Sec 197). The Constitution has also provided for a framework for command and operational use of the Armed Forces (S198), as well as their structure (S199). The Constitution is therefore the bed-rock of military law.

8. **Legislative Enactments.** To put its provisions into effect, the Constitution directs that several actions be taken. For instance the establishment of the various branches of the Armed Forces by the National Assembly (S179), making of regulatory laws by the National Assembly (S198)(4)(a) and (b), establishment of the Federal Character body for the composition of the Armed Forces (S199). These actions require the enactment of various laws or executing of several documents as appropriate. The Armed Forces Decree 1993 (Decree No 105 as Amended) hereinafter called AFD 105 is the best example of legislative enactment.

9. **Rules, Regulations, Orders and Instruments.** The Constitution has provided in several areas that the President or the National Assembly should respectively make regulations or pass laws relating to specific areas, including matters relating to the Armed Forces. (See Secs 8(4), 197(1), 198(3) and (199). In the Acts or Laws passed by the National Legislative authorities also, provisions have been made for more details in specific areas by way of orders, regulations, rules of other legal instruments. (See Secs 22,26,180 AFA 105). In the Military Chain-of-Command delegation of authority is a necessary factor. This factor carries with it the power to give orders and pass instructions. See Secs 283 and 284 AFA 105. It is clear to see the direct connection between the Constitution, the Acts of the National Legislature, the rules and regulations of the military, and the orders and instructions of individuals in the Chain of Command. Once there is an unbroken link flowing as a consequence of the constitutional provision and the duty to be performed by a member of the

Armed Forces, the rules, regulations, orders or instructions passed or other legal instrument passed has the power of law under S33.

10. **Other Civil Legislation.** All laws enacted for the good governance and maintenance of law and order having bearing with the Armed Forces form part of military law. Examples include the application of Financial Regulations, Customs Regulation etc.

11. **Other Sources.** Other sources of military law include the following:
- a. Military customs accepted and practiced by the Armed Forces of Nigeria.
 - b. Cases decided by Superior Courts of record affecting military action which are binding on all courts of subordinate jurisdiction including courts martial.
 - c. Received English Law as applicable in Nigerian Civil Courts, relating to the Armed Forces.
 - d. Treaties and conventions, and bilateral or multilateral agreements to which Nigeria is a signatory which have bearing with military service or operations.

THE LEGAL STATUS OF A SOLDIER

12. From the onset it should be clear to a soldier that he is a citizen and as such he enjoys all the rights of citizenship, but that he is also bound by his duties and obligations. However, a soldier's position on enlistment or commission is quite unique. An ancient authority stresses that the status of a soldier should be based on the doctrine of "Compact" . "a soldier....does agree and consent that he shall be subject to military discipline and he cannot appeal to civil courts to rescue him from his own compact".

13. This view was however problematic since some soldiers were conscripted. Clearly no compact could be said to exist between a conscript and the State. The accepted view in the words of MC Cardiac is that: “the burden of a man who enters the Army whether voluntarily or not is that he will submit to military law not that he will submit to military illegality”

14. A soldier’s status as a citizen is therefore only modified to the extent required by Rules, Regulations and Orders of the military. A soldier is therefore bound by both civil laws and military laws.

15. **The Soldier and the Law**

a. The Constitution provides for the establishment of the Armed Forces and the assignment to them of the statutory duty of defending the nation. The soldier is therefore a creation of the law, with a lawful duty. See Sec 179 of the Constitution. A soldier must therefore uphold the law at all times, whether in routine or internal security duties or general warfare.

b. Obedience of legitimate or lawful orders is the cardinal requirement of military discipline and a vehicle by which the military duty is carried out. As long as he carried out his legal duties in a lawful manner, a soldier is protected by the law. In fact in the lawful performance of his duty a soldier is not even to be obstructed. See Sec 248 AFA 105.

c. A soldier has no duty to obey unlawful orders or commands which are contrary to the laws of the military, state or other statutory authority. However, regard must be given to the requirement of the military duty. As long as a soldier does not carry out orders which are manifestly illegal he cannot be subjected to criminal or civil action. But if he acts outside the law he will be held accountable for his illegal action, even unto the penalty of death.

SUMMARY

16. In summary it should be stressed that the compact of a soldier on enlistment is to subject himself to military law and not military illegality. A soldier's burden from that very time becomes onerous as he becomes subject not only to civil law but also to all international rules, customs and conventions of warfare. The soldier therefore must function or act whether in peace or in time of war within the limits of legality. Finally a soldier has been accorded special privileges and protections under the law which will enable him to carry out his lawful duties effectively. He should therefore uphold the law so as not to render himself liable to criminal or civil action in the performance of his official assignments.

REFERENCE

17. a. Armed Forces Act 105.
- b. The Regulations for the Application of the 1949 Geneva Convention and for Treatment of Prisoners of War.
- c. Achike Groundwork of Military Laws and Military Rule in Nigeria Chapters 2-4.
- d. Manual of Military Law (Ninth Edition) Part 1 Chapter 6.
- e. Manual of Military Law (Ninth Edition) Part 2 Section 5.
- f. Land Operations Vol III Part 182.
- g. The 1979 Constitution of Nigeria as Amended.
- h. Decree No 4 Public Officers (Protection Against False Accusation) Decree 1984.

SPECIMEN QUESTIONS

18. Specimen questions to assess the assimilation and understanding of the subject are attached at Annex B. (See 1B-1).

CHAPTER 2

DUTIES OF THE ARMY COUNCIL

INTRODUCTION

19. The constitution of the Federal Republic of Nigeria empowers the National Assembly to make further laws for carrying into effect the provisions of the Constitution relating to the Armed Forces of Nigeria. This provided the basis for the enactment of the Nigerian Army Act 1960. Until recently the NA Act 1960 constituted the main legal instrument for administration and employment of the Nigerian Army.

20. In 1999 the Provisional Ruling Council, taking the position of the National Assembly, issued the Armed Forces Act (as amended) which replaced the NA Act 1960. As part of its provisions for the administration, command, and discipline of the Army, the Armed Forces Act No 105 of 1999 established an Army Council.

21. The composition, responsibility and powers of the Army Council as provided in Sec 9 of the Armed Forces Act of 1999 are highlighted in this chapter.

OBJECTIVES

22. At the end of this chapter the candidates should be able to identify:
- a. The composition of the Army Council.
 - b. The functions of the Army Council.
 - c. The powers of the Army Council.

COMPOSITION

23. The Army Council shall consist of:
- a. The Minister of Defence who shall be the Chairman.
 - b. The Chief of Defence Staff who shall be the Vice Chairman.
 - c. The Chief of Army Staff.
24. It is noteworthy that the Decree does not list the Director General of the Ministry of Defence as a member of the Army Council but provides that he shall be the Secretary of the Council.
25. The Chairman may from time to time appoint any member of the Army Council to perform the duties of the Chairman at any meeting of the Army Council at which the Chairman is absent and the appointment may be general or in respect of a particular meeting. A member may be represented by a nominee at a particular meeting after due approval by the Chairman.
26. The Army Council may whenever it deems necessary, co-opt any officer, public officer or any other person as a member of the Army Council. He shall not be entitled to vote or count towards a quorum. Furthermore, such membership shall cease at the end of that particular meeting unless the Army Council decides otherwise.

FUNCTIONS OF THE ARMY COUNCIL

27. The functions of the Army Council are contained in Sec10 of the **Armed Forces Act** No 105 of 1999. It provides that the Army Council shall be responsible under the general authority of the Chief of Defence Staff, for the command, discipline and administration of and for all other matters relating to the Army. The responsibility of the Army Council shall not extend to the operational use of the Army.

POWERS OF THE ARMY COUNCIL

28. The powers of the Army Council are contained in Sec 11 of the **Armed Forces Act of 1999**, the Act provides that the Army Council shall have the powers:

- a. To organize the work of the Army Council and the manner in which it shall perform its functions and determine the duties and responsibilities of the members.
- b. To delegate powers of the Army Council to any member. For example the powers of the Army Council as a Reviewing Authority in Courts Martial may be delegated to the service Chief (See sect 154(3) of Armed Forces Act No 105 of 1999).
- c. To authorize the Service Chief to delegate his powers.
- d. To consult with persons who are not members of the Army Council.
- e. To determine the procedure for conducting business of the Army Council.
- f. To do such other things which the Army Council may consider necessary or desirable to secure the better performance of its functions under the decree.

SUMMARY

29. The Army Council is a legally constituted body which derives its powers from the Nigerian Constitution and the Armed Forces Act No 105 of 1999. It is responsible for the command, discipline, and administration of the Nigerian Army. It has powers to organize its work, determine its procedures and delegates its powers.

REFERENCES

30. For further reading candidates are advised to consult the following:
- a. The Constitution of the Federal Republic of Nigeria 1979 (As Amended).
 - b. The Armed Forces Act of 1999 (Decree No 105 as Amended).

SPECIMEN QUESTIONS

31. Specimen questions on this chapter are at Annex A to Chapter 2 (See 2A 1).

CHAPTER 3

OFFENCES, ARREST AND DELAYS

INTRODUCTION

32. An offence is a wrong by the standard of or a breach of a set of written regulations (DOs and DONTs) that have been highlighted or decreed. Emphasis is laid on the written aspects by the Constitution of the Federal Republic of Nigeria 1979 especially in Sec 33 (12). This section provides that a person shall not be convicted of a criminal offence unless the offence is defined and the penalty there of prescribed in written law. For the military personnel, offences are broadly of two types:

- a. Military Offences.
- b. Civil Offences.

33. In the course of investigating an offence that has been committed or to prevent the commission of an offence it might become imperative to apprehend and detain the alleged offender. Where arrest becomes necessary it must be effected by a person who has legal powers to do so. Furthermore on arrest, effort should be made to ensure speedy investigation and trial of the offender to avoid undue delays.

OBJECTIVES

34. At the end of this chapter the candidate should be able to:
- a. Identify what constitutes an offence in service law.
 - b. Distinguish between military offences and civil offences
 - c. Identify who has the powers to arrest and how arrest may be effected.

- d. Identify measures for avoiding delays when arrest has been effected.
- e. Identify circumstances in which arrest becomes necessary .

MILITARY OFFENCES

5. Military offences are contraventions of the rules laid down for the enforcement of military discipline. These regulations are contained in the Armed Forces Act 105 of 1999 which is a review of the Nigerian Army Act 1960 enacted by the legislature of the Federal Republic of Nigeria in 1960. Persons to be tried under the Armed Forces Act of 1999 must be subject to services law. Sec 168 and 169 of the Armed Forces Act of 1999 provides grounds for bringing offenders who have ceased to be subject to Service Law for trial under the Decree. These offences are peculiar to Service Personnel and Civilians who come under Sec 272 of the Act.

36. It will be noted that a few civil offences are reflected in what constitutes military offences. Offences of civil nature such as those in Sec 66, 67 and 68 of the Act (Offences relating to property) which often bring in civil litigation should be treated as military offences.

37. Military offences are grouped as follows:

- a. Misconduct to Action.
- b. Mutiny.
- c. Insubordination.
- d. Absence from duty.
- e. Malingering and Drunkenness.
- f. Offences relating to property.
- g. Navigation and flying offences.
- h. Other offences in respect of ship and aircraft.
- i. Prize offences.

- j. Sexual offences.
- k. Offences relating to Billeting and Requisitioning of vehicles.
- l. Offences relating to and by person in custody.
- m. Miscellaneous offences.
- n. Offences in relation to court martial.
- o. Conduct to prejudice of service discipline.

CIVIL OFFENCES

38. In legal parlance, if an offence is one for which the punishment is either a fine or term of imprisonment or both, it is referred to as a crime. If the offence is one for which the offender makes good the wrong he has caused the victim or his estate in form of damages then it is a civil and not a criminal offence. Some offences such as killing by dangerous driving or rape fall under both types of offences.

39. As used in military law, a crime provided for by the civil authorities as contained in a penal code or such other subsidiary legislation as the Police Act and Customs and Excise Regulations to mention a few is Civil Offence. Military Personnel are subject to both Military and Civil Law. Courts Martial have jurisdiction over both Military and Civil Offences.

40. The Armed Forces Act of 1999 provides for Civil Offences in sec 105-114. In court martial or in a military trial the appropriate section for the civil offences as provided in the Act has to be entered on the charge sheets and has to be explained by quoting the section or the civil enactment contravened and the act constituting the contravention.

ARREST

41. An arrest is an act of restricting the movement of a suspected offender.

This constitutes the first step in the process of justice. A suspected offender may be placed under arrest to prevent him from damaging evidence, prevent him from escaping, prevent further illegal acts or ensure the personal safety of the offender.

POWERS TO ARREST

42. The power to arrest offenders is provided for in Sec121 of the **Armed Forces Act 1999**. It provides that a person subject to Service Law under the Decree may be arrested if found committing an offence, alleged to have committed an offence or reasonably suspected of having committed the offence.

43. An officer may be arrested by an officer of superior rank, but if engaged in quarrel of disorder, by an officer of any rank. A soldier may be arrested by an officer; warrant or petty officer or a non-commissioned officer subject to service law. However in this case, the person effecting the arrest must be of superior rank to the offender. A provost or any officer, warrant or petty officer, non-commissioned officer or soldier, rating or air craftsman lawfully exercising authority under a Provost Officer or on his behalf may arrest any person subject to service law. However an officer shall not be arrested by virtue of this provision except on the orders of another officer.

44. A person authorised to effect arrest may use force as is reasonably necessary. Power of arrest may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest. Generally, arrest consists of actual seizure or touching a person's body with a view to detaining that person. It is imperative that before a person is arrested, he must be told by the person effecting the arrest that he is being arrested and the circumstances or reason for such arrest be clearly stated. The reason must of course be a true reason and it must be one which legally justifies the arrest of that person.

PROVISION FOR AVOIDING DELAY AFTER ARREST

45. Allegation against any person subject to military law who has been arrested for committing an offence must be investigated without delay. Steps must be taken to ensure that he is either punished for the offence or release from custody.

46. If by any chance a service personnel under arrest must remain under custody for a longer period than eight days without release, a special report should be made on the necessity for his continued detention. This report will be made to prescribed ASA every eighty days until a court martial is assembled or the offence is dealt with summarily or the person is released from arrest.

47. Circumstances or factors that will help determine the need for retaining an offender in custody will include the following:

- a. The seriousness of the allegation or accusation, for example murder or treason.
- b. The need to establish the identity of the person under arrest.
- c. The need to secure or preserve evidence relating to the allegation or accusation.
- d. The need to prevent the continuation or repetition of the offence or any other offence.
- e. The necessity to secure the safety of the person, other persons or property.
- f. The need to forestall the actual or likelihood of interference with investigation, for example threatening, intimidating, incriminating or suborning of witnesses.
- g. The need to prevent escape of the accused.
- h. The fact that the accused has not surrendered but has been apprehended as an illegal absentee or has habitually absented himself.

SUMMARY

48. In this chapter what constitutes an offence has been defined. The two broad categories of offences in military law namely military offences and civil offences have also been discussed.

49. An arrest is an act of restricting the free movement of a suspected offender. Wide powers are granted for service personnel and even civilians to arrest an alleged offender as a necessary measure for the maintenance of military discipline and good order. However officers and other service personnel effecting arrest must ensure they have legal backing. Power of arrest may be exercised personally or be delegated to a legally competent personnel. Use of force in making an arrest must be reasonable and justifiable. Allegation against any person under arrest must be investigated speedily and measures taken to avoid undue delays.

REFERENCES

50. The notes in this chapter are meant only to provide guidance. Candidates must read the following:

- a. The Armed Forces Act 105 of 1999 Part XII and Part XIV section 121 and 122.
- b. Rules of Procedure (Army) 1972 (Rules 4-6).

SPECIMEN QUESTIONS

51. Specimen questions for the guidance of candidates are at Annex A.
(See 3A-1).

CHAPTER 4

**CHARGES, CHARGE SHEETS AND FRAMING
OF CHARGES**

INTRODUCTION

52. Charges or accusations of wrong doing are important steps in the enforcement of discipline. As an initial action the framing of a charge should be carried out with caution and care so that the accused does not suffer injustice. Unit Adjutants, Staff Captains 'A', Administrative Officers and all officers whose duty it is to initiate disciplinary actions should be familiar with charges, charge sheets and how to frame charges properly.

OBJECTIVE

53. At the end of this chapter the candidate should be able to do the following:

- a. Identify the essential parts of a charge.
- b. Identify essential sections of a charge sheet.
- c. Bring out the facts of the accusation in the language that meets the requirement of the law.

DEFINITION OF A CHARGE

54. Under the provision of Sec 123 of AFA 105 of 1999, a charge is an allegation against an accused that he has committed an offence under the provisions of the Decree; that is to say he has committed a Military or Civil Offence.

55. It is necessary therefore to define an offence since the allegation

warranting a charge must disclose an offence. Section 33(12) of the Constitution requires that for an act to amount to a criminal offence, both that act and the punishment prescribed for it must be contained in a written law. A charge must therefore be contained in a Charge Sheet (AB 252) so that this requirement among other legal requirements must be met.

56. **Sections of Charge Sheet.** An NA Form 252 at Annex A contains several parts. These are as follows:

a. **Superscription**

- (1) Heading - CHARGE SHEET
- (2) Legal Title - NA Form 252
- (3) Enabling Law - Made Under AFA 1999

b. **Identification of the Accused**

- (1) Army No.
- (2) Rank.
- (3) Name.
- (4) Unit.
- (5) Proof of subjection to Military Law.

c. Statement of offence.

d. Specification of the written law.

e. Particulars of offence.

f. Subscription (Paras 2-3).

g. Trial Information.

57. **Form of a Charge.**

a. Every charge shall state the offence which the accused is alleged to have committed, and if the written law creating the offence gives it any specific name the offence should be described in the charge by that name. For instance if the offence of carrying another person's property without his knowledge or permission is contained in a written law as

“theft” it should be stated as such in the charge.

b. If the written law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated to give the accused enough notice of the matter with which he is charged. For instance, Sec 66 is the group of offences in relation to public and service property, miscellaneous offences relating to property is S68, offences relating to requisitioning of vehicles Sec 686, contain several offences. They are not the names the specific written law has given. An accused can then be charged under Sec 66 as follows:

- (1) (a) Stealing of public property.
- (b) Stealing a service property.
- (c) Fraudulently misapplying public property.
- (d) Fraudulently misapplying service property.
- (2) (a) Receiving service property knowing or having reasons etc.
- (b) Receiving public property etc.
- (c) Retaining public property etc.
- (3) Willfully damaging etc.
- (4) By willful neglect causing damage to etc.
- (5) Occasionally, the marginal headings may be a perfect statement of an offence, however, in some instances the use of marginal heading as statement may even violate the rules of framing charges. A statement of offence as “miscellaneous offences relating to property” violates the rule against multiplicity.

c. The written law and the section of that law against which the offence is said to have been committed shall be set out in the charge.

GENERAL GUIDELINES IN FRAMING A CHARGE

58. a. The NA Form 252 is a guideline, it can be expanded to include as such information or numbers of accused persons as are involved in a particular case.
- b. Para b of the Form that requires identification of the accused should be filled with correct information to avoid delay at the trial, whether summary or by court martial.

59. **Statement of Offence.**

- a. Every charge should contain only one offence. If several acts of the accused form different offences, they should be charged separately. For instance Cpl Van Duul breaks into the orderly room and steals a Typewriter; he will be charged with 2 separate offences as the act of breaking into a building in that manner is burglary, which is one offence and stealing is another offence. If he is charged in one charge with breaking and stealing, the charge will be bad because it contains multiple charges.
- b. See also Para 57 above.

60. **Particulars of Offence.**

- a. (1) The charge should contain such particulars as to time and place of the offence and the person, or thing, in respect of which the offence was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.
- (2) In offences such as conduct to prejudice of service discipline, the charge shall contain such particulars of the conduct of the accused as will be sufficient for that purpose.
- (3) Ordinary language (not technical) should be used.
- b. Charges should not be framed from memory. A copy of AFA 105 of 1999 must be kept open at the relevant section so that the facts

alleged to constitute an offence meet the requirements of the section of the law under which the accused is charge.

c. If the same facts constitute one or other offence, only one of the offences should be charged; as charging for the two offences will amount to duplicating the offence. For instance a sexual offence may amount to rape or carnal knowledge, not both. See Sections 77 and 103 AFA 105 of 1999.

61. All sections of NA Form 252 are important. No section or particular item should be left blank when the Form is completed.

SUMMARY

62. A person cannot be convicted of an offence unless that offence satisfies the constitutional requirement that the offence and its prescribed punishment be contained in a written law.

63. The accusation against a person that he has committed an offence under AFA 105 must be reported in a form of a charge written on a Charge Sheet NA Form 252.

64. All the sections of a Charge Sheet are important and must be filled when a Charge Sheet is completed. However, particular attention should be paid to statement of offence and particulars of offence which form the crux of the accusation.

65. Every distinct offence should be charged as a separate offence; and not lumped together in one charge.

66. Offences should not be charged in duplicity.

67. Note also provisions of Sec 124(6) of AFA 105.

REFERENCES

68. a. AFA 10 of 1999.
- b. Constitution of the Federal Republic of Nigeria (As Amended)
Section 33.
- c. BRETT and MCLEANS, Second Edn 1974, SS 151- 156.
- d. MML (Rules of Procedure Army 1972) Rules 14-17.

CHAPTER 5

DISCIPLINARY POWERS OF COMMANDERS

INTRODUCTION

69. As revealed elsewhere, in this revision notes, the object of Military Law is firstly to provide for the maintenance of discipline and good order among the troops, and secondly to provide for administrative matters. Consequently, Commanders at various levels, as facilitators and executors of military discipline are given graduated powers to investigate charges and deal with offenders summarily or through the avenue of courts martial. They have wide ranging powers to maintain discipline over the body of men under their command. Exercise of these powers especially in the disposal of charges against accused persons vary according to the instruments of powers they possess. There are instances where a Commanding Officer may be appointed mainly for disciplinary purpose only. The provisions of the Armed Forces Act of 1999 on the disciplinary powers of Commanders are mainly to be found in sec 115 - 118. It is essential that all officers are familiar with these provisions not only to ensure that appropriate measures are applied to arrest cases of indiscipline but also to ensure that justice is done at all times.

70. This Chapter will highlight powers of CO to investigate charges and various punishments that commanders at all levels can award to service personnel of various ranks in summary trials. The powers of these commanders to convene courts martial and confirm sentences of courts martial will also be highlighted. Detailed Court Martial procedures are not covered as they are dealt with in a subsequent chapter.

OBJECTIVE

71. At the end of this chapter the candidate should be able to know:
- a. Legal Status of Commanders in enforcing discipline.
 - b. Disciplinary powers of Commanders at various levels
 - c. The powers of Commanders to convene courts martial.

POWERS OF INVESTIGATION BY COMMANDERS

72. When an offence has been committed against the provision of the AFA 105, the allegation shall be reported to the CO of the accused in the form of a charge. The Commanding Officer shall investigate the charge in the prescribed manner. (See Rule of Procedure No 8). The accused may be attached to another unit for the purpose of the investigation as a response to natural justice because the CO cannot investigate and judge his own case. This however applies in a case where the CO is the only material witness.

73. After investigation an offence, its nature and the rank of the accused determines the action to be taken in order to dispose of it. Subject to the provisions of the AFA 105 the Commanding Officer shall summarily deal with the charge. Where the CO is convinced that the charge cannot be summarily dealt with, he has the powers to refer the case to the Appropriate Superior Authority (ASA) or take steps to have the charge tried by a Court Martial. The ASA may deal with a charge referred to him summarily, remand for trial by court martial or refer it back to the Commanding officer advising a retrial or dismissal of the charge.

74. Summary dealing with a charge according to the AFA 105 refers to the CO or Appropriate Superior Authority taking the following actions:
- a. Dismissing the charge.

- b. Determining whether the accused is guilty.
- c. Where the accused is guilty recording a finding of guilty and awarding punishment.
- d. Condoning the offence.

POWERS OF COY COMD OR EQUIVALENT

75. **Accused Below the Rank of Capt.** The Company Commander or his equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments:

- a. Confinement not exceeding 7 days.
- b. Extra duties not exceeding 7 days.
- c. Admonition.

76. **Accused Below the Rank of Sgt.** The OC may deal with the case summarily and dismiss the charge or award any of the following:

- a. IHL not exceeding 7 days in the unit guardroom.
- b. Extra duties not exceeding 7 days.
- c. Confinement not exceeding 7 days.
- d. Where offence has occasioned any expense, loss or damage, or stoppages not exceeding N200.00.

77. The senior officer of a detached Unit or Company may be authorized by the Appropriate Superior Authority to order a Court Martial (Special) in special circumstances.

POWER OF BATTALLION COMDS AND EQUIVALENT

78. **Accused Below the Rank of Major or Corresponding Rank.** The CO or equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments:

- a. Fine not exceeding N5,000.00.
- b. Where the offence has occasioned expenses, loss or damage, stoppages not exceeding N2,500.00.

79. **Accused Below the Rank of WO or Equivalent.** The CO or equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments:

- a. Dismissed Regiment to the Rank of Corporal or below.
- b. IHL up to 28 working days in the unit guardroom Cpl and below.
- c. Reduction in rank not below 1 step for Sgts and below.
- d. Forfeiture of pay not exceeding 30 days.
- e. Where offence has occasioned expenses, loss or damage, stoppage not exceeding N5,000.00.
- f. Confinement to barracks not exceeding 21 days.
- g. Extra duties not exceeding 7 days.
- h. Reprimand or Severe Reprimand
- i. Admonition.

80. The Commanding Officer of a battalion or of a corresponding unit in the Armed Forces may convene a special Court Martial (See AFA 105 of 1999 Sec 13 (3). Furthermore the Commanding Officer has the power to confirm the finding or sentences of a court martial he convenes or that convened by his subordinate. See AFA 105 Sec 152(a).

BRIGADE COMMANDER OR EQUIVALENT

81. **Officer Below the Rank of Lt Col.** The Brigade Comd or his equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments:

- a. Fine not exceeding N1,000.00.

- b. Forfeiture of pay not exceeding thirty days.
- c. Where the offence has occasioned any expenses loss or damages, stoppages not exceeding N3,000.00.

82. **Accused Below the Rank of WO.** The Brigade Comd or his equivalent may summarily deal with the charge either by dismissing the case or awarding any of the following punishments.

- a. Dismissed Regiment to Staff Sergeant or below.
- b. IHL up to 28 days in the unit guardroom.
- c. Reduction of rank, Staff Sergeant and below and below not and more than two steps.
- d. Fine not exceeding N200.00.
- e. Where the offence has occasioned any expenses, low or damages, stoppages not exceeding N2,500.00.

83. A Brigade Comd or his equivalent has the power to convene a General Court Martial and Special Court Martial. He may also confirm the finding or sentence of a court martial he convenes or that convened by the subordinate Commander.

POWERS OF GENERAL OFFICER COMMANDING AND EQUIVALENT

84. **Accused of the Rank of Colonel or Below.** The GOC or his equivalent may summarily deal with the charge by dismissing the case or awarding any of the following punishments:

- a. Fine not exceeding N2,000.00
- b. Forfeiture of pay not exceeding 60 days.
- c. Where the offence has occasioned expenses, loss or damages, stoppages not exceeding N5,000.00.

- d. Reprimand or Severe Reprimand.
- e. Admonition.

85. **Accused of the Rank of MWO and Below**. The GOC or his equivalent may summary deal with the charge by dismissing the case or awarding any of the following punishments:

- a. Dismissed Regiment to the Rank of WO or below.
- b. IHL up to 28 days in the unit guardroom.
- c. Reduction in rank for WO and below but not more than 2 steps.
- d. Fine not exceeding N250.00.
- e. Where the offence occasioned expenses, loss or damages, stoppages not exceeding N3,000.00.
- f. Forfeiture of pay not exceeding 28 days.
- g. Reprimand or Severe Reprimand.
- h. Admonition

86. The General Officer Commanding or his equivalent has the power to convene a General Court Martial and a Special Court Martial. He may also confirm the finding or sentence of a Court Martial he convened or that convened by his subordinate Commanders.

POWERS OF THE CHIEF OF ARMY STAFF

87. AFA 105 1999 has not made any express provision for summary dealing with charges by the COAS. However, the COAS has the power to listen to appeals and petitions arising from summary trials by subordinate Commanders.

85. The COAS has the power to convene a General Court Martial or Special Court Martial. He also has the power to review and confirm the finding or sentence of Courts Martial he convenes or those convened by subordinate Commander. The COAS also attends to petitions and appeals arising from

Courts Martial or summary trials.

RIGHT OF ELECTION TO BE TRIED BY COURT MARTIAL

89. Commissioned Officers, Warrant Officers and equivalent appearing before their Commanding Officers for summary trial, have the right to elect to be tried by Court Martial (AFA 105 1999 Sec 117).

CHARGES THAT SHALL NOT BE DEALT WITH SUMMARILY

90. It is important to note that AFA 105 See 124 (6) (a) provides that a Commanding Officer shall not deal summarily with a charge under the following sections of the Act:

- a. Sections 45, 46, 47, 48, 50, 51, 52, 53, 60, 65, 66, 67, 71, 72, 73, 75, 76, 83, 88, 91 and 93.
- b. See also Sections 95 and 98.

POWER TO CONDONE

91. By virtue of the provision of AFA 10 See Sec 179(1)(c), a Commanding officer has the disciplinary powers to condone an offence and in this case the accused shall not be liable in respect of that offence to be tried by a Court Martial or to have the case dealt with summarily. In this case, an offence shall be deemed to have been condoned by the Commanding Officer if and only if he or any officer authorized by him to act in relation to the alleged offence, with knowledge of all circumstances informed the accused that he will not be charged with the offence.

REVIEW OF SUMMARY FINDINGS AND AWARD

92. The AFA 105 Sec 143 provides that where a charge has been dealt with summarily and the charge is not dismissed, an Appropriate Superior Authority

may review the finding or award upon a petition by the person convicted and sentenced not later than one month after the finding and award was made. Where on review, merit of the petition is established, the appropriate Superior Authority may quash the award or vary the award as deemed appropriate. This is obviously one of the disciplinary power Commanders.

SUMMARY

93. All Commanders have powers to enforce discipline by investigating charges and disposing them summarily or through court martial.

94. The disciplinary powers of Commanders are restricted and vary according to the instrument AFA 105 of 1993.

95. After due investigation of charges, Commanders may dispose of the charges summarily and dismiss the case or find the accused guilty and award an appropriate punishment. A summary of this is at Annex A.

96. When convinced that a case cannot be dealt with summarily, a Commander may refer the charge to an ASA or arrange for the case to be tried by a Court Martial.

97. Besides the power to investigate and try charges, other disciplinary powers exercised by Commanders include condoning, review of findings and awards from summarily trial and confirmation of awards by courts martial.

REFERENCES

98. Candidates are required to read the following:
- a. Armed Forces Act 105 of 1999 Part XIII and Part XIV.
 - b. Rules of procedure (Army) 1972 Rule 7-13.

SPECIMEN QUESTIONS

99. Specimen questions to guide candidates are at Annex B (See 4B- 1).

CHAPTER 6

PROCEDURE FOR TRIAL AND TYPES OF COURT MARTIAL

INTRODUCTION

100. A trial at the Court Martial is the highest avenue that affords the Armed Forces and the accused the opportunity to make their cases for a justifiable determination. The members of the court hear all the evidence against the accused and then listen to the response of the accused where he so desires.

OBJECTIVES

101. At the end of this chapter the candidate should be able to:
- a. Identify the difference between the summary and abstract of evidence, how they are made and their relevance.
 - b. Understand the burden of proof generally.
 - c. Understand the nature and types of evidence.
 - d. Know the types and power of courts martial and their jurisdiction.
 - e. Understand the basis for qualification and disqualification of membership of courts martial.
 - f. Know the duties of Convening and Confirming Authorities.

PART 1 PROCEDURE FOR TRIAL

EVIDENCE

102. Evidence helps in trial to determine the question of fact and law. It is the medium through which a conviction or acquittal on charges could be reached. The procedure for trial begins with an investigation by the CO under Sec 123 AFA of 1999 and includes the giving of evidence at the actual trial. Both the

investigation by CO (taking of Summary and Abstract of Evidence) and the evidence at the trial must be done in accordance with the rule of evidence under Sec 143 AFA 105 of 1999.

104. The object of every criminal or civil trial is to determine two classes of questions or issues namely:

- a. Question of fact all by receiving evidence.
- b. Question of Law.

105. The question then, is: What are the rules of Evidence? “The rules of evidence are the rules whereby question of facts are determined for judicial purposes”. MML Ch V Para1(b). Another definition is that: ”Evidence is the means by which facts are proved, but excluding inferences and argument”.

106. This write up on the rules of Evidence is by no means exhaustive; it only touches on the important aspects.

IMPORTANT ASPECTS TO BE NOTED

107. Courts Martial are required to observe and apply the rule of admissibility of evidence as is observed in the civil courts in England and Nigeria. (MML Ch V Para.)

108. A member of a court martial must refrain from relying upon any special knowledge which he has of a given case. But he may rely upon his common sense and general knowledge of human nature and of the ways of the world, and his general service knowledge, when he comes to deciding issues of fact raised at the trial, MML Ch V Para 3(a).

109. Excluded from evidence in judicial trials, for reasons such as these:

- a. It assists the court in dealing with relevant issues.

- b. It secures fair play to the accused. It prevents waste of time by concentrating more on the core issues in the case. MML Ch V Para 5(a).

IMPORTANT MATTERS COMPRISING THE RULES OF EVIDENCE

110. **What Must be Proved in a Trial.** To obtain a conviction on a charge, the prosecution must prove every ingredient of the offence charged. So, also every detail of the particulars of the charge. Therefore no extraneous matters are required.

111. **Judicial Notice.** This means that courts are expected or assumed to take notice of the facts which are generally known. As such, no special proof would be required of such matters. Examples include:

- a. All matters of notoriety.
- b. All matters within general service knowledge, etc, MML Ch V Para 1(a) and 10.

112. **Burden of Proof.** Every person is presumed to be innocent until he is proved guilty. Therefore, the burden of proof rests on the person who say another is guilty, to so prove that the other person is really guilty. Burden of proof shifts from the prosecution to the accused when the prosecution has proved a prima-facie (conclusive) case against the accused. MML Ch Para 12&12 and Sec 134 Evidence Act.

113. **Relevancy and Admissibility.** “Relevancy forms the background of the statements that they are admissible in evidence if it does not tend immediately to prove or disprove a charge alleged”. This is because, that fact will be considered as not relevant. By and large, however, we should note that it is not all relevant evidence that is admissible, and also not every admissible evidence that is relevant.

114. **Admission and Confessions.** Admission is a statement oral or written which suggests any inference to any fact in issue or relevant fact in a case and which is made by any of the persons in that case. A confession is any statement oral or written stating or suggesting the inference that the accused has committed the crime. And this must be voluntarily made by the accused.

COMPETENCE AND COMPELLABILITY

115. Competence in Evidence, means the requirement of the law as to who is capable of giving an acceptable evidence in the court. For this purpose the law has directed that, every person is a competent witness once he is capable of understanding the nature of the questions put to him and giving rational answers to them. Thus going by such a requirement, a person can only be incompetent for reasons such as:

- a. Tender Age.
- b. Old Age.
- c. Disease of the mind or body etc.

116. Compellability is the legal obligation imposed on competent witness. However, it is not every competent witness that is compellable. But every compellable witness is a competent witness. When a person is said not to be compellable then such person is considered to be privileged. Example, of the persons who are privileged and not compellable can be said to include:

- a. Head of State.
- b. Members of the Diplomatic Corps.
- c. Governors.
- d. Spouse of an accused in a monogamous marriage.
- e. Judges and Magistrates.
- f. Lawyers (in Lawyer/Client Relationship).

117. A woman or her husband is a compellable witness in cases of each others acts of violence or cruelty against the other spouse.

HOW EVIDENCE IS GIVEN

118. Evidence, in court could be given orally or in writing or by the inspection of the material in issue. These are what give rise to the different classification of evidence. Examples are, oral evidence, documentary evidence and real evidence to mention a few.

119. When witnesses are called into the court, the order of the examination runs thus:

- a. Examination-In-Chief.
- b. Cross-Examination.
- c. Re-examination.

Examination-In-Chief and re-examination are by the party who calls the witness. While the cross examination is done by the party other than that who called the witness. By and large the examination must be done in the chronological order mentioned above.

120. **Classification of Evidence.** Evidence can be classified as follows:

- a. Oral and documentary evidence.
- b. Direct and circumstantial evidence.
- c. Hearsay evidence.
- d. Character evidence.
- e. Similar facts evidence.
- f. Opinion evidence.
- g. Real evidence.

CORROBORATION

121. Corroboration means evidence of two or more witnesses supporting each other in a material particular. They however, need not to be the same exactly. This requirement for corroboration is because, in certain offences, for instance, sexual offences and traffic offences, etc, the witnesses must be more than one and their evidence must be corroborative.

122. There is generally no limit to the number of witnesses required in a case. Therefore the witnesses could even be one.

SUMMARY

123. Having known the mechanism with which the rules of evidence work, it is also equally important to note that evidence in itself has different classifications, each of which affects its relevancy and admissibility.

WHAT IS A SUMMARY OF EVIDENCE

124. Summary of evidence is the recording of evidence in the case of an accused.

125. Summary or Abstract of Evidence is taken in one of the various circumstances mentioned hereunder:

- a. When there is an investigation and a CO is not hearing evidence himself, he may order that a Summary or Abstract of Evidence be made.
- b. A Summary of Evidence should be taken:
 - (1) Where the maximum punishment for the offence with which the accused is charged is death.
 - (2) Where accused requires one to be taken.

- (3) Where the CO thinks that interest of justice requires this to be made.

126. Where a CO has not ordered for a summary of evidence to be taken, then he has to order the making of an Abstract of Evidence. MML 1972 Ch 11 Para 25.

ABSTRACT OF EVIDENCE

127. This is made, when the CO has at first ordered for summary of evidence to be taken.

128. It consists of sworn signed statements of witnesses who gave evidence before the CO and such other persons whose evidence is relevant to the charge. MML 1972 Ch 11 Para 34.

OBJECT OF SUMMARY OR ABSTRACT OF EVIDENCE

129. These have been provided for by the MML and they are made for the following:

- a. To assist the CO decide whether to remand an accused for trial by a court martial or not.
- b. To enable convening officer to decide whether he should order trial by court martial and if yes, the type of court martial to be ordered.
- c. To provide a "Brief" for the prosecution. (Here 'Brief means the summary of the facts and relevant issues to be met at the trial).
- d. To inform the Defence or Accused of the Nature of the prosecution evidence. MML1972 Ch 11 Para 26.
- e. To enable the President or Judge-Advocate appreciate the nature of the case before the court commences.
- f. To enable the confirming officer know the facts of the case and decide as to the punishment, in the event of a plea of guilty.

PROCEDURE FOR THE TAKING OF THE SUMMARY OR ABSTRACT OF EVIDENCE

130. This is so vast and not exhaustive. As such it can not be enumerated in this write up. However, for easy reference and application of the basics, refer to para 27-38 of Ch 11 MML.

131. It includes the duties to be observed by the officer taking the Summary or Abstract of Evidence, the right of the accused to make or not to make a statement; the right of the accused to be advised, the right of accused to cross-examine the prosecution witnesses and so on.

PART 2: TYPES OF COURTMARTIAL CLASSIFICATION

132. There are 2 types of Courts Martial; a General Court Martial and a Special Court Martial. The main differences between the 2 types of court martial are:

- a. The level at which they are convened including ranks of the membership.
- b. The rank of the accused.
- c. The nature of offence including the nature of punishment prescribed for the offence.
- d. Their composition especially the size and rank of the membership.

133. **A General Court Martial (GCM) Sec 129 AFA 105**

- a. May be convened by:
 - (1) The President (as C-In-C).
 - (2) The Chief of Defence Staff.
 - (3) The Respective Service Chiefs.
 - (4) GOCs of Corresponding Commanders.

- (5) Brigade or Corresponding Commanders.
- b. **The Composition of a General Court Martial.** A GCM consist of at least 8 persons as follow:
 - (1) A President.
 - (2) Four Members (not less, may be more).
 - (3) A waiting Member.
 - (4) A Liaison Officer.
 - (5) A Judge Advocate who must be a lawyer.
- c. **Powers.** The jurisdiction of a fully composed GCM extends up to a death penalty. See Secs 130, 118 and 119 AFA 1999.

134. **A Special Court Martial (SCM)**

- a. **Power to Convene:**
 - (1) A SCM may be convened by any of the persons named in para 132(a) above.
 - (2) Also a CO or corresponding Commander can convene.
 - (3) Commander of detached sub-unit who would otherwise not qualify under subsection A of that paragraph.
- b. **Composition.**
 - (1) A President.
 - (2) Two member (not less, may be more).
 - (3) A waiting member.
 - (4) Liaison Officer.
 - (5) Judge Advocate
- c. **Jurisdiction.** An SCM cannot impose a death penalty if it consists of only 2 members (See Sec 130(3), 118 and 119).

DISQUALIFICATION OF OFFICERS FROM MEMBERSHIP OF A COURT MARTIAL

135. The persons who cannot constitute members of a court martial have been provided to be as follows:

- a. The officer who convenes a court martial cannot be a member or President of the Court.
- b. An officer who, at any time between the date on which the accused was charged with the offence and date of the trial, has been the commanding officer of the accused.
- c. Any officer who has investigated the charge against the accused or who under service law has held or has acted as one of the persons holding an inquiry into matters relating to the subject matter of the charge against the accused. MML Ch III para 19.
- d. An officer under sub-para c above cannot be a Judge Advocate in the trial. See 134 (1) (2).

DUTIES OF A CONVENING OFFICER

136. An officer who is charged with the responsibility of convening a court martial has certain duties to observe.

- a. These include:
 - (1) Satisfying that the charge discloses an offence under the AFA 1999, and that it is framed in accordance with the rules of procedure.
 - (2) Satisfying that the evidence in the Summary or Abstract of Evidence is sufficient to justify trial.

NOTE: By the foregoing, it is meant that, an accused should not be sent for trial by court martial unless there is reasonable probability.

b. In deciding the type of court martial to be convened, the convening officer must bear in mind the following:

- (1) The nature of the offence.
- (2) The prevalence of the particular offence charged.
- (3) The general state of discipline in his command.
- (4) The character of the accused.
- (5) The maximum sentence which can be imposed having regard to any sentence which the accused is already serving (if any).

INFORMATION TO BE GIVEN TO AN ACCUSED

137. As soon as an accused has been remanded for trial by court martial, and at least 24 hours before the trial, he must be furnished with the following information as of right:

- a. A copy of the charge sheet and the Summary or Abstract of Evidence.
- b. The name of the President and the ranks, names and units of the members and waiting members of the court which is to try him.
- c. Explanation of the charges and his right to call witnesses.
- d. Proper opportunity to prepare his defence including free communication with his defending officer of counsel.
- e. If the prosecution is to be conducted by an officer with legal qualifications or counsel, notice must be given to the accused to enable him employ a counsel, if he so desires. MML 1972 Ch III para 25.

REPRESENTATION OF AN ACCUSED

138. An accused may defend himself personally, or allow a defending officer or counsel to represent him. Where however he refuses to have a defending office or counsel to represent him, he should be asked to sign a certificate to that effect.

NOTE: Where an accused is represented by a counsel, he may still have a defending officer to assist the counsel, but here, the defending officer will have no right of audience. MML Ch III Para 26. RP&25(b).

COMMENCEMENT OF COURT PROCEEDING

139. Appearance of the accused ordinarily marks the opening of the court session. There fore when the court is satisfied that:

- a. It is legally constituted.
- b. The accused is amenable to its jurisdiction.
- c. The charges are in order.

The President will order the court to be opened. The accused will be brought before the court with his escort. He Prosecutor and the defending offer or counsel will take their places in the court. And the court session will then begin. MML Ch III Para 38.

OBJECTION BY THE ACCUSED TO MEMBERSHIP OF THE COURT

140. When all the necessary persons are present, the convening order will be read by the President or by the Judge Advocate (if any) and the president and members will answer to their names. The accused will be asked whether he objects to be tried by any of them, of which he can object on reasonable grounds.

141. Where an accused has objected to being tried by the court as a whole on the grounds that he is not amenable to trial by that court, the objection should only be taken into consideration after the accused has been arraigned.

142. Where an objection to the President is upheld the court must adjourn and report to the convening officer; and if the objection to a member is upheld a qualified waiting member (if one has been appointed) may be appointed by the

President to take his place. But if there are no waiting members and the court has fallen below the legal minimum number of members it must adjourn and report to the convening officer.

143. Where more than one accused is ordered in one convening order, to be tried by the same court but on separate sheets, they may also be brought by the court for the reading of the convening order, but an objection by an accused will be dealt with separately. Sec 137 AFA 1999 (1) MML Ch (III) para 40-41.

ARRAIGNMENT OF THE ACCUSED

144. When a court martial is sworn, an accused is arraigned on the charge contained in the charge sheet. Arraignment consists of:

- a. The reading of the commencement of the charge and the person named, “the accused”.
- b. The reading of each charge separately to the accused and called upon him to plead to it.

145. The arraignment is conducted by the President and the Judge Advocate.

146. Where two or more accused persons are being tried jointly, one accused may apply to be tried separately on the grounds that unless so tried he will be prejudiced in his defence.

147. Where there are several charges in a charge sheet the accused may, before pleading to the charge, apply for separate trial on any charge on the ground that unless so tried he will be prejudiced in his defence.

148. After the arraignment, the succeeding paragraph deals with such matters that can be called the body content of the procedure for trial in the court martial. However, the aim here is to provide a guideline to them for the sake of easy reference. (Except for the paragraph on the announcement of finding, which will

be elucidated at a subsequent stage). The matter can be enumerated as follows:

- a. Plea of guilty and/or not guilty. (Chap III para 52- 73 MML)
- b. Deliberation on finding. (Chap III para 74-82 MML)
- c. Proceedings on Conviction. (Chap III para 83-85 MML)
- d. Deliberation on the award of sentence. (Chap III para 86 -92 MML)
- e. AFA 1999.

DELIBERATION ON AND ANNOUNCEMENT OF FINDINGS

149. After all the processes of the trial have been completed, and the court has come to a finding, the President will cause the court to be opened. The findings will then be announced by the President in the open court.

150. A finding of guilty or special finding will be announced as being subject to confirmation.

151. When an accused has been acquitted on all the charges in a charge sheet and there is no second charge sheet, he will be released. In such a case, the record of the proceedings will be dated and authenticated by the signature of the President and Judge Advocate (if any) and forwarded as directed in the convening order. MML Ch III para 80.

OFFENCES BY CIVILIANS IN RELATION TO COURT MARTIAL

152. It will be pertinent to conclude with the wording of the AFA 1999 as regards offences by civilians in relation to court martial which is provided in the AFD 1993 thus: “Where in Nigeria any person other than a person subject to Military Law under this Decree”.

- a. Having been duly summoned to attend as a witness before the court martial, fails to comply with the summon or

- b. Refuses to swear an oath when duly required by a court martial to do so has committed a criminal offence.

CONFIRMATION (SS 148-152 AFA 1999)

153. A confirming authority has got a lot of powers as listed under Sec 151 AFA 1999. Accordingly, certain persons are exempted from confirming sentences of court martial See Sec 152(2) AFA 1999. All candidates should be familiar with the confirmation of court martial trials.

SUMMARY

154. After going through the types of Courts martial and the procedure for trial, you are expected to have become familiar with the specific issues listed below. If you are not then you should work on them. These issues are:

- a. **Procedure for Trial**
 - (1) Some important aspects to note relating to admissibility of evidence.
 - (2) Other important matters relating to the rules of evidence.
 - (3) Competence and compellability.
 - (4) How evidence is given; including classification.
 - (5) Corroboration.
 - (6) Summary and Abstract of Evidence.
 - (a) Definition.
 - (b) When they are taken.
 - (c) Object for taking them
 - (d) Procedure of taking them.
- b. **Courts Martial.**
 - (1) Types, constitution and jurisdiction.

- (2) Disqualification of officers from membership.
- (3) Duties of convening authorities.
- (4) Information to be given to the Accused for preparation of his defence.
- (5) Representation of Accused.
- (6) Commencement of Court Proceedings.
- (7) Preliminary Objections by the Accused.
- (8) Arraignment.
- (9) Deliberation on, and announcement of findings.
- (10) Offences by Civilians in Relation to Courts Martial.

REFERENCES

155. a. MML 174 (Part 1).
- b. MML 1974 (Chap III).
- c. AFA 1999.
- d. Laws of the Federation of Nigeria (Evidence) Chap 112.

SPECIMEN QUESTIONS

156. Specimen questions to assist the candidate to understand the topic are at Annex A. (See 6A-1 and 6A-2).

CHAPTER 7

LAW OF WAR

INTRODUCTION

157. Throughout history, nations have called upon their soldiers to defend their national interest by going to war. As the act of warfare became more complex and with the introduction of weapons of mass destruction, nations became aware of the need to prevent unnecessary destruction of lives and property in times of war. This need reflected both military interests and the morale values of civilized nations.

158. These morals and values have crystallized into binding customs and formal laws which are referred to as Laws of War which are to be found in the Hague Regulations, the Geneva Conventions and the two protocols additional to the Conventions.

OBJECTIVE

159. The aim of this précis is to provide adequate guidance for the candidates taking Senior Staff qualifying Examination in Military Law. At the end of this Chapter, the candidates should be familiar with the followings:

- a. Origin, purpose and sources of the law of war.
- b. Important terms in the law of war.
- c. Principles on the protection and treatment of prisoners of war and civilians.
- d. Treatment and protection of Refugees.
- e. Legal status of multi-national forces on foreign territory.
- f. Rules of engagement.
- g. Violations of law of war.

PURPOSES OF LAW OF WAR

160. The purposes of the law of war can be summarized as follows:
- a. Facilitates the restoration of peace.
 - b. Reconcile military needs and the requirement of humanity.
 - c. Distinguish between what is permitted and what is not permitted.
 - d. Safeguard certain fundamental human rights of persons who fall into the hands of enemy particularly prisoners of war, the wounded, sick and civilians.

SOURCES

161. The law of war is derived from two principal sources:
- a. **Custom:** The law of war was initially entirely customary, that is based on established practice or custom of nations, e.g. declaration of war, truce, surrender etc.
 - b. **Treaties and Convention:** Treaties and Conventions are now the major sources of the law of war. They represent attempts to make customary law certain by codification. They also include any other agreement on issues connected with armed conflict arrived at in international conferences convened for that purpose. Traditionally, there were two main groups of law of war treaties: The Hague Conventions and the Geneva Conventions. Below are some of the Conventions pertinent to our purpose:
 - (1) Hague Convention No. III of 1907, Relative to the opening of hostilities. (May be cited as H. III).
 - (2) Hague Convention No. IV of 1907, Respecting the Laws and Customs of War on Land. (May be cited as H.IV)

- (3) Hague Convention No.V of 1907. Respecting the Rights and Duties of Neutral powers and persons in case of war on land. (May be cited as H.V).
- (4) Geneva Convention Relative to the Treatment of Prisoners of war, 1949. (may be cited as G.III).
- (5) Geneva Convention Relative to the protection of civilian persons in time of war, 1949. (May be cited as G.IV)
- (6) Geneva Convention for the Amelioration of the condition of the wounded and sick in the field, 1949. (May be cited as G.V).

SOME IMPORTANT DEFINITIONS IN THE TEACHING OF LAW OF WAR

162. **Party to a Treaty.** Each State is bound by the international treaties it has accepted (by “ratification” or “accession”). Such a State is a “Party” to the said treaty. A State can, when accepting a treaty, make national interpretation and/or reservations.

163. **Party to a Conflict.** A State formally or in fact involved in hostilities against one or more State is a “Party to the conflict”. Such a State and its armed forces is a “belligerent”.

164. **Neutral State.** A State formally or in fact not party to a given armed conflict is a “neutral State”.

165. **Protecting Power.** “Protecting power” means a neutral State which has been designated by a party to the conflict and accepted by the enemy party and has agreed to carry out the functions assigned to a “Protecting Power” under the law of war. “Protecting Power” shall be designated without delay from the beginning of an armed conflict. The “Protecting Power” has in particular the following tasks:

- a. To visit and to control prisoners of war and civilian internee camps (e.g., to verify the living, supply and health conditions and to ensure free communication with the exterior by mail).
- b. To check and if necessary take necessary action in the case of interment of foreign civilian persons.
- c. To verify the supply conditions in occupied territory.
- d. To make statements and enquiries regarding violations of the protection of cultural objects.
- e. To lend their good offices in case of disagreement with regard to the application of the law of war.

166. **Combatants**. “Combatants” mean members of the armed forces, except medical and religious personnel. While engaged in combat action or in military operation preparatory to it, combatants must distinguish themselves from the civilian population.

167. **Civilian Persons**. Civilian persons means any person who do not belong to the Armed Forces and do not take part in a “levee en masse”. In case of doubt whether a person is a civilian or not, that person shall be considered a civilian. Journalists engaged in dangerous professional mission in areas of armed conflict are civilian persons.

168. **Levee en masse**. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously and en masse take up arms to resist the invading forces, without having had time to form themselves into organized armed units are referred to as “ Levee en masse”. Participants in a “levee en masse” are considered as combatants provided they carry arms openly and respect the law of war.

169. **Military Objective**. Military objectives are:

- a. The Armed Forces except medical and religious personnel, medical establishments, religious buildings and objects.
- b. The establishments, buildings and positions where Armed Forces or their materials are located (e.g., positions, barracks, stores).
- c. Other objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances prevailing at that time, offer a definite military advantage.

170. A military objective remains a military objective even if civilians are in it. The civilians within such an objective or its immediate surroundings share the danger to which the military objective is exposed.

171. **Civil Defence**. Civil Defence are volunteer civilian population assigned to specific tasks for the protection and survival of the civilian population during the war or national disaster. The specific civil defence tasks provided for by the law of war include:

- a. Provision of warning systems.
- b. Evacuation of the wounded.
- c. Construction of shelter.
- d. Blackout measures.
- e. Rescue operations.
- f. Medical services, including first aid and religious assistance.
- g. Fire fighting.
- h. Detection and making of danger areas.
- i. Decontamination and similar protective measures.
- j. Provision of emergency accommodation and supplies.
- k. Emergency assistance in the restoration and maintenance of order in distressed areas.
- l. Emergency repair of indispensable public utilities.

- m. Emergency disposal of the dead.
- n. Assistance in preservation of objects essential for survival.
- o. Complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to planning and organization.

172. **Military Necessity.** Military necessity means a principle which justifies those measures required to secure the overpowering of the enemy provided that they are not forbidden by law. The law of war provides expressly for specific derogations from protective provisions in case of “Imperatives” or similar military necessity. The derogation means that the protective status may be reduced, waived or given up when required for the fulfillment of the mission. For example, enemy wounded establishment must be left to continue to care for the enemy wounded met there. However, in case of “urgent military necessity you are allowed to use captured fixed medical establishments of the enemy forces.

SOME GENERAL PRINCIPLES ON THE PROTECTION AND THE TREATMENT OF PRISONERS OF WAR AND CIVILIANS

173. The Geneva Convention 1949 is an internationally recognized code of conduct for warfare which provides for the protection and treatment of prisoners of war and binds all the members of the committee of nations (UN).

174. The main object of these regulations is to ensure that the principles of the convention are understood and observed by all ranks, to clarify the right and privileges of which members of the Armed Forces are entitled if they fall into the hands of the enemy, and to secure correct and uniform treatments for enemy prisoners of war. All commanders are therefore to ensure a complete compliance of these regulations as any contravention will be followed by a sanction if the injured country complains to the Security Council of the United Nations (UN).

175. It is therefore imperative to state some of the important principles of these conventions as follows:

a. The Geneva Convention for the protection of war victims will be observed by all ranks in the event of hostility.

b. Prisoner of war means as a rule is any combatant who has fallen into power of the enemy party. Prisoners of war are in the hands of the enemy nation and of the individuals or military units that captured them. Military Medical Personnel and Military Religious personnel not being combatants do not become prisoners of war, to treat and minister unto them respectively.

c. Each party to a conflict is entitled to a protecting power to ensure the observance of the conventions. The International Red Cross could be conferred with such powers. Representatives of the protecting Power and of the International Committee of the Red Cross (ICRC) shall:

(1) Have access to all places and premises where prisoners of war are located.

(2) Be allowed to visit prisoners of war on transfer.

(3) Be allowed to interview prisoners of war without witnesses.

(4) Have full liberty to select the places they wish to visit.

(5) Assist prisoners of war in case of judicial prosecution.

d. Prisoners will be treated at all times humanely and with respect. They will be protected against acts of violence or intimidation and against insults. No measure of reprisal will under any circumstances be taken against them, nor will any discrimination be made to the detriment of any prisoner or group of prisoners because of their race, nationality, religion or political opinions. Treatment of prisoners of war shall be based on the following principles:

(1) **Humanity**. Prisoners of war shall be spared and treated humanely in all circumstances.

(2) **Protection.** Prisoners of war shall be protected particularly against acts of violence or intimidation and against insults and public curiosity.

(3) **Respect.** Prisoners of war are entitled to respect for their persons and their honour.

(4) **Women and Children.** Women and children shall be treated with all the regards due to their sex and age.

(5) **Equality.** All prisoners of war shall be treated alike subject to:

(a) The provisions of the Geneva Convention III and the Additional Protocol to the Geneva Convention of 1977, relating to rank, sex and age.

(b) Any privileged treatment accorded to them by reason of their state of health, age or professional qualification.

(6) **Elimination:** Prisoners of war shall not be eliminated because they are causing impediment to your operation or to prevent them from sharing from your limited ration.

(7) **Protection from Bombardment and Chemical Warfare:** Prisoners of war should be provided with shelter against bombardment and mask against chemical/biological warfare.

e. Possessions of prisoners of war including documents must be safely kept. Interrogation of prisoners of war must be firm but fair.

f. The conventions impose an obligation on all parties to search for any anomaly and bring to trial, personnel who have committed or ordered to be committed, any grave breaches of the conventions.

- g. Grave breach of the conventions include:
- (1) Willful killing, torture or inhuman treatment of the wounded and sick POW or the inhabitants of an occupied territory, or willfully causing them great suffering or serious injuries.
 - (2) Extensively destroying or appropriating unlawfully and used wantonly, property protected by the conventions, when this is not justified by military necessity.
 - (3) Compelling prisoners of war or the inhabitants of occupied territory to serve in the Armed Forces or willfully depriving them their trial.
 - (4) Unlawful deportation, transferring or confining the inhabitants of occupied territory.
- h. When interrogated, a prisoner of war is duty bound to give his surname, first name, rank, date of birth and number. His identity card could be asked for but not confiscated. No physical or mental pressure, nor any other form of coercion may be exerted on Prisoners of War in order to induce the to answer questions.
- i. Questioning will be in the language understood by the prisoner.
- j. All possessions which are for personal use to the prisoner will be retained by him except arms, horses and military equipment.
- k. Money will be retained by the prisoner of war until he arrives at a place of documentation. Looting of prisoners' property or the acceptance or exchange of souvenirs is expressly forbidden.
- l. The Commander of the prisoners of war camp holds the competence for disciplinary punishment. That competence may be exercised by a deputy or other officer to whom it has been delegated. The disciplinary sanctions applicable to prisoners of war are as follows:
- (1) A fine which must not exceed 50% of the advance of pay and working pay (which the POW would otherwise receive under

articles 60 and 62 of G.III) during a period of not more than thirty days.

(2) Discontinuance of privileges granted (over and above the treatment provided for by the convention).

(3) Fatigue duties not exceeding two hours daily.

(4) Confinement.

m. The detaining Power may utilize the labour force of prisoners of war who are physically fit. A fair working rate shall be paid. The following rules govern the employment of prisoners:

(1) The work performed by prisoners of war may not have a military character or purpose, i.e., the work shall not contribute to the war effort.

(2) Their working conditions shall not be inferior to those of the Nationals of the Detaining Power.

(3) Non-Commissioned Officers can only be required to do supervisory work.

(4) Officers may not be compelled to work.

(5) Unless he is a volunteer, no prisoner of war may be employed on work which is of a dangerous nature. For example, the removal of mines or similar devices is considered as dangerous work.

n. The Detaining Power shall grant all prisoners of war a monthly advance of pay and an account for each prisoners of war.

o. Civilians in an occupied territory are entitled in all circumstance or respect for their person, their honour, family rights, religious convictions, traditional rights and customs. They will be humanely treated at all times and protected against all acts or threats of violence and when they are for any reason held in custody, against insults and public curiosity. Women will be especially protected against any attack on their honour, in

particular against rape, informal prostitution or any form of indecent assault. Grave breaches include:

- (1) Detention of civilians in a place where enemy is likely to attack.
 - (2) Exertion of mental or physical pressures to obtain information.
 - (3) Any measure that will exert physical suffering on the civil populace.
 - (4) Arbitrary punishment of civilians without a proof of any offence committed.
 - (5) Collective penalties for civilians.
 - (6) All forms of intimidation or terrorism.
 - (7) Pillage or looting.
 - (8) Reprisal against civilians or their property.
 - (9) Taking hostages.
 - (10). Detention of civilians in areas particularly exposed to war.
- p. Civilians in occupied territory may not be compelled to work unless they are over 18 years. They may also not be compelled to take part in duties which will expose them to military operations.

TREATMENT AND PROTECTION OF REFUGEES

176. In a theatre of war or peace keeping operations, the control of refugees and the provision of shelters, food, and medical attention is primarily the responsibility of the local civilian authorities. However, where the authorities are incapable of handling refugee problems, the military Commander must be prepared to take over all the responsibilities of such refugees. Since refugees are members of the civilian populace who have been displaced in a helpless situation due to the ravages of war, the principles of the Geneva conventions on the protection and treatment of civilians mentioned above will be applicable to

them.

177. It, therefore, follows as a necessary corollary that troops when tasked with the primary responsibility of refugees should treat them fairly and humanely. They should not be subjected to any physical or mental tortures or maltreatment. Their fundamental rights of movement, religion and above their right to life must be preserved. In short, any form of prohibition that applies to civilians in the Geneva Conventions may also apply to refugees. Any contravention of the above principles constitutes a breach of the conventions and will render the culprits amenable to civil jurisdiction either in his home country or in the country of custody.

MULTINATIONAL FORCES

178. Occasions may arise which require the presence of forces from different nations in the territory of a foreign State, e.g., the establishment of a United Nations Force in the territory of one or more States - UNIFIL, UNIMOG, or forces of other regional bodies, e.g., ECOMOG.

179. Where the Armed Forces of one or more nations is located or engaged in the territory of a foreign State with its consent, the territorial laws of the State shall apply. However, additional measures are necessary, such as special agreements and detailed rules for practical cooperation (e.g. ad-hoc status of forces agreements).

180. In addition to the basic agreement establishing the presence of the Armed Forces in foreign territory, decisions and measures such as the following shall be taken by the military commands and civilian authorities concerned:

- a. Subordinations and command chain.
- b. Personal and material field of application of the law of war (particularly when the States concerned are not all parties to the same

treaties).

- c. Applicable administrative provisions.
- d. Applicable penal legislation and disciplinary competencies.
- e. Responsibility with regard to the law in multinational forces.
- f. Competence for coordinating measures between military commands and civilian authorities.

RULES OF BEHAVIOUR IN ACTION

181. The following paragraphs contain summary of what commanders who have tactical missions to fulfill should know and do. The compilation is devoid of technicalities and without reference to international treaties and conventions. Your examiner is unlikely to require citations.

182. **Combat Rules.**

- a. Fight only combatants.
- b. Attack only military targets.
- c. Spare civilian persons and objects.
- d. Restrict destructions to what your mission requires.

183. **Enemy Combatants who Surrender.**

- a. Spare them
- b. Disarm them.
- c. Treat them humanely and protect them.
- d. May be questioned, but only bound to give information for their personal identification.
- e. Hand them over to your superior for evacuation to the rear.

184. **Wounded Enemy Combatants.**

- a. Collect them.
- b. Care for them.

- c. Hand them over to your superior or send them to the nearest medical personnel.

185. **Civilian Persons.**

- a. Respect them.
- b. Treat those in your power humanely.
- c. Protect them against ill-treatment; vengeance and taking of hostages are prohibited.
- d. Respect their property; do not damage or steal it.
- e. Enemy civilian persons may not be compelled to give information.

186. **Distinctive Signs.** Medical personnel and facilities, civil defence, cultural objects, places of worship, museums etc. are usually marked with distinctive signs, e.g.; Red Cross on a white background for medical. It is imperative you:

- a. Respect persons bearing and objects marked with such signs.
- b. Let these persons perform their tasks unless ordered otherwise.
- c. Leave these buildings, establishment, and monuments untouched and do not enter them, unless otherwise ordered.
- d. Do not fire at medical personnel, air or ground vehicles, tents or other facilities used for the care of wounded, sick and disabled persons.

187. Distinctive signs used for various organizations and facilities are attached to this write-up as Appendix 1

188. **Prohibited Deception.** While it is lawful for a commander to use deception to mask his intentions and actions from the enemy, the law of war prohibits certain types of deceptions:

- a. It is prohibited to make improper use (that is to mask other persons and objects than those entitled to) of:

- (1) The distinctive signs and signals of medical services.
 - (2) The distinctive signs of civil defence.
 - (3) The distinctive signs of works and installations containing dangerous substance.
- b. It is prohibited to kill, injure or capture an enemy by resort to perfidy. "Perfidy" consists of committing a hostile act under the cover of a legal protection. The following acts are examples of perfidy:
- (1) To pretend an intent to negotiate under a flag of truce.
 - (2) To pretend surrender.
 - (3) To pretend being incapacitated by wounds or sickness.
 - (4) To pretend being a civilian or non-combatant.
 - (5) To pretend having protected status by the use of flags, emblems or uniforms of the United Nations or of neutral States.
- c. It is prohibited to move medical establishments or transport, civilian persons or prisoners of war, or to use their presence to render certain areas or military objectives immune from combat action (e.g., to shield military objectives from attack).

VIOLATION OF LAW OF WAR

189. The violation of law of war constitutes a crime for which you could be punished under national laws or by an international tribunal as in the Nuremberg and Tokyo trials after the Second World War. Note that you are personally responsible even if you were ordered to commit the act. The law does not recognize the plea of "I was only obeying orders" or "superior order". Note also the current trials for war crimes leveled against some Commanders and other military actors in the recent Yugoslavian crisis.

190. Respect for the laws of war is no excuse for disobeying lawful orders of a superior. Where the order is clearly unlawful, you have a duty to bring this to

the notice of the superior and thereafter to disobey the order if he insists. For example, an order to commit a crime such as murder, rape, pillage or torture clearly violates the common sense rules of decency, social conduct and morality. You are therefore obligated to disobey such an order. Common sense and the laws of war will help you recognize what is clearly criminal. You have a duty to report war crime through your normal chain of command.

SUMMARY

191. This précis should help you understand your responsibilities and obligation under the law of war. You are legally obliged to limit death, destruction and unnecessary suffering in combat.

192. The law of war helps protect you and your unit and make the restoration of peace easier. Specifically, you must know and obey the rules regarding forbidden targets, tactics and techniques, enemy captives and detainees, civilians and private property, and prevention and reporting of criminal acts and orders.

193. Although combat is different from everyday life, common sense still applies. Law and Order and humane treatment in combat increase a unit's discipline and security; win support for the mission, maintain dignity, honour and conscience; and win the battle and the peace.

REFERENCES

194. Candidates will find the following publication useful:

- a. Treaties Governing Land warfare , Department of US Army Publication (FM 27 1)
- b. The law of Land warfare, department of US Army publication (FM 27 10)

- c. Protocols to the Geneva Conventions of 12 August 1949.
- d. Handbook on the Law of warfare for Armed forces by Frederick De Mulinen.
- e. International Law Concerning the Conduct of Hostilities, an International committee of the Red Cross Publication.
- f. Basic Rules of the Geneva conventions and their additional protocols, publication of the International Committee of the Red Cross.
- g. Manual on the Rights and Duties of the Medical Personnel in Armed Conflicts by Dr. Alm Baccino-Astrada.

SPECIMEN QUESTIONS

195. Specimen questions on Law of War are at Annex A (See 7A-1).

CHAPTER 8

GENERAL MILITARY LAW PROBLEM SOLVING

INTRODUCTION

196. Solving Military Law problems is not an independent topic in the sense of the topic in Chapter 1-7 above. Rather it is the use of the knowledge of Military law to solve disciplinary and administrative problems of the service and members of the Armed Forces.

197. In this regard the Military Law is used in its comprehensive sense, as the problems a commander and his staff may be required to solve in the units and formations are virtually unlimited. In real life, candidates as officers may have to resolve NOK problems between children of polygamous parents; resolve anomalies arising from conditions of service; or carry out disciplinary actions involving loss of seniority, separation from service and even death penalty.

198. A thorough knowledge of every aspect of Military Law is a prerequisite as one simple and straight forward issue may involve others rather more complicated.

199. What can be done is to give a broad spectrum of problems that may arise and hints on how to solve them.

OBJECTIVE

200. At the end of this chapter the candidate should be able to have clearer view of how to proceed with solving Military Law problems.

IDENTIFYING THE PROBLEM

201. Questions that test the knowledge of a candidate on how he would solve a Military Law problem should depict a problem, and should be realistic. Clearly, question asking for explanations, definitions or other theoretical answers are inappropriate, as they do not depict a problem.

202. Once the candidate understands this he should now switch his mind into a frame of mind that is as close to a real life situation as possible.

203. Once a candidate switches to a real-life situation he should proceed as follows:

- a. (1) Whether the problem is purely administrative.
- (2) Whether it is purely disciplinary.
- (3) Whether it is disciplinary and administrative.
- b. He should also identify whether civil or public interest is involved.

For instance a soldier steal the Unit's typewriter:

- (1) This is a purely disciplinary matter.
- (2) No civil or public interest is involved.

IDENTIFYING THE APPLICABLE LAW

204. Once he is able to identify the problem or problems, the candidate should proceed to identify the law applicable and also the aspect of the law applicable.

- a. For instance in the above case a soldier steal the Unit's typewriter; no civil interest.
- b. It is purely a disciplinary case.
- c. Relevant law applicable is AFA 105 of 1999.
- d. The specific aspect of law involved is stealing of service property- the section can easily be checked from the contents of AFA of 1999.

205. In a question where the candidate is required to charge the soldier he may now physically open the appropriate page and section and proceed as discussed under Chapter 4 which deals with framing of charges.

206. However, the above situation does not depict a problem to solve, it is a mere theoretical question. To make the issue a problem to solve may need more facts. For instance the soldier has been charged with stealing, disgraceful conduct and conduct to prejudice of service discipline. The acting CO has tried him and has dismissed him from the regiment and ordered that the cost of the Typewriter be recovered from the soldier's salary.

SOLVING THE PROBLEM

207. Now there is really a problem to solve; a complicated one. However the problem may not always be so complicated but at times it could be worse. Anyway, in the instant case consider the following:

- a. Are all the charges correct in law? Can the facts as alleged support all the offences charged?
- b. Is there any other legal rule offended by the charges?
- c. Can the offences be tried summarily by the charges?
- d. Is the punishment in accordance with the disciplinary powers of commanders?
- e. Does the punishment or do the punishments offend any rule of justice (excessive, double jeopardy?)
- f. Is the issue of recovery of the cost only disciplinary or includes an administrative issue-what does Terms and Conditions of Service for Soldiers 1984 say about soldiers pay?

208. It is expected that by the time the candidate is able to resolve these issues,

the problem would be solved. In certain cases, the determination of one answer may render the rest of the action irrelevant even if they are correct in law. However, in answering examination questions in general Military law problem solving each factor should be stated before the overall effect is given as the solution to the problem.

POSSIBLE ANSWER

209. In the instant case:

- a. The charge of disgraceful conduct cannot be supported.
- b. The charge of conduct to prejudice to service law is duplicitous (See Sec 103 AFA 1999)
- c. The charge of stealing cannot be tried summarily. (This is very vital).
- d. The CO can dismiss the offender. (Consider the rank).
- e. The CO cannot order for recovery, of the cost of the typewriter from the soldier's salary because:
 - (1) The cost of the typewriter is in excess of stoppages the CO can award.
 - (2) Under the Terms and Conditions of Service, the soldier's salary cannot be confiscated to repay for the typewriter.
- f. Since the offence of stealing cannot be tried summarily, the trial of the soldier was not correct in law- a nullity.
- g. The Ag CO should not publish the award.
- h. The soldier should be re-tried referred to a trial by Court martial.

SUMMING UP

210. Candidates are to note that this area is as vast as the problems a Unit can encounter in real-life. They should therefore discuss as many real-life problems as possible which require knowledge of Military Law to solve them.

211. It should be clear to all candidates now that they must know or at least attempt to know all the following:

- a. Constitution of Nigeria.
- b. All Acts relating to members of the Armed forces.
- c. All Army publications relating to special and general matters.
- d. NA Forms.
- e. Related forms having general application such as TF 1, Gen 33 and similar documents.

SPECIMEN QUESTIONS

212. Now try some of the specimen questions at Annex A. (see 8A 1)

ANNEX A TO
CHAPTER 1
MILITARY LAW
LECTURE NOTES

EXTRACT FROM THE CONSTITUTION OF THE
FEDERAL REPUBLIC OF NIGERIA AS AMENDED

C-Armed Forces of the Federation

213. (1) The Federation shall subject to any Act of the National assembly made in that behalf, establish, equip and maintain an Army, a Navy, an Air Force and such other branches of the Armed Forces of the Federation as may be considered adequate and effective for the purposes of:

- a. Defending Nigerian from external aggression.
- b. Maintaining its territorial integrity and securing its borders from violation on Land, sea or air.
- c. Suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, but subject to such conditions as may be prescribed by an Act of the National Assembly; and
- d. Performing such other functions as may be prescribed by an Act of the National Assembly.

(2) The composition of the officer corps and other ranks of the armed forces of the Federation shall reflect the federal character of Nigeria.

214. (1) The powers of the President as the Commander-in-Chief of the Armed Forces of the Federation shall include the power to determine the operational use of the armed forces of the Federation.

(2) The powers conferred on the President by sub-section (1) of this section shall include the power to appoint the Chief of Defence Staff, head of the Army, head of the Navy, Head of the Air Force and Head of such other branches of the armed forces of the Federation as may be established by an Act of the National assembly.

(3) The President may, by directing in writing and subject to such conditions as he may think fit, delegate to any member of the armed forces of the Federation his powers relating to the operational use of the armed forces of the Federation.

(4) The National Assembly shall have power to make laws for the regulation of:

- (a) The powers exercisable by the President as Commander-in-Chief of the Armed Forces of the Federation; and
- (b) The appointment, promotion and disciplinary control of members of the armed forces of the Federation.

215. The National Assembly shall -

- (a) In giving effect to the functions specified in section 197 of this Constitution; and
- (b) With respect to the powers exercisable by the President under section 198 of this Constitution, by an Act, establish a body which shall comprise such members as the National Assembly may determine and which have powers to ensure that the composition of the armed forces of the Federation shall reflect the federal character of Nigeria in the manner prescribed in the said section 197 of this Constitution.

216- (1) The Federation shall establish and maintain adequate facilities for

carrying into effect any Act of the National assembly providing for compulsory military training or military service for citizens of Nigeria.

(2) Until an act of the National Assembly is made in that behalf the President may maintain adequate facilities in any secondary or post-secondary educational institution in Nigeria for giving military training in any such institution which desires to have the training.

Notes. *The SD adopted is that of legal draftsmanship.*

ANNEX B TO
CHAPTER 1
MILITARY LAW
LECTURE NOTES

SELF ASSESSMENT QUESTIONS/SPECIMEN QUESTIONS

1. What is the relationship between the Constitution and Military Law.
2. Define Military Law.
3. What are the sources of Military law?
4. How would you classify the following legal documents:
 - a. Part 2 Orders.
 - b. AFG 1033.
 - c. AB 252.
 - d. Terms and conditions of Service.
 - e. Unit OPO 2 file reference 23BDE/273/G
 - f. AFA 105.
 - g. BOI and Related Subjects.
5. What are the legal factors that should affect a soldier's conduct in performing his duties including general warfare.
6.
 - a. Define chain of command.
 - b. Each subordinate Commander derives his authority from the Superior Commander, not from the Constitution. Comment.

ANNEX A TO
CHAPTER 2
MILITARY LAW
LECTURE NOTES

SPECIMEN QUESTIONS ON DUTIES OF ARMY COUNCIL

1. The Army Council is a creation of the Nigerian Constitution. Discuss.
2. Trace the link between the Army Council, the Armed Forces Act 105 of 1999 and the Nigerian constitution.
3. What is the composition of the Army council?
4. The Director-General Ministry of Defence is not a member of the Army council. Discuss.
5. Distinguish between the functions and the powers of the Army council.

ANNEX A TO
CHAPTER 3
MILITARY LAW
LECTURE NOTES

SPECIMEN QUESTION ON OFFENCES, ARREST AND DELAY

1. State 3 ways by which an OC may effect the arrest of his CSM who is misbehaving.
2. Name at least 4 categories of persons that can effect an arrest and the condition under which they can do so.
3. Enumerate conditions that may warrant a person's retention in custody.
4. Explain the procedure put in place in the military justice and disciplinary system to avoid delay in bringing a person in custody to trial.
5. What are civil offences? Enumerate any five.

ANNEX A TO
CHAPTER 4
MILITARY LAW
LECTURE NOTES

CHARGE SHEET

MADE Under AFA 105 of 1999 Section 123 NA FORM 252

1. THE ACCUSED:.....

Army No:.....96NA/112.....

Rank:.....CPL.....Name:.....VAN NDUUL.....

Unit:.....103 INF BN.....

Being a person subject to military law is charged with

a. Statement of Offence:.....STEALING SERVICE
PROPERTY.....

Punishable under section:.....66(a).....AFD 105 of 1993

b. Particulars of Offences. In that he at ..PAIKO ON 13
NOVE 96.....CARRIED THE UNIT TYPE-WRITER AND
PAWNED IT IN THE MAMMY
MARKET.....

.....

2. OFFENCE REPORTED BY:

(Number, Rank, Name & Unit).....63NA/1313213 MWO TAL
MUSA, 103 INF BN

3. Witnesses:.....93NA/35 LCPL BIVAN
AKACHUKU..... (Number, Rank &

Unit):.....103 INF BN.....

4. TO BE TRIED BY:.....MAJ BK ZAMADU (N/7000 OC ADMIN
COY.....

(Incuse of Court Martial only, state type)

5. Number, Ranks, Name & Unit):.....

a. Company or equivalent Commander See 1 a.

Finding.....

Award.....

Recommendations:.....

.....

Date:..... Signature:.....

.....

Rank, Name and Number

b. BY COMMANDER EQUIVALENT

Findings:.....

Recommendations:.....

.....

Award.....

.....

.....

Date:..... Signature:.....

.....

Rank, Name and Number

c. BDE/GAR COMMANDER OR EQUIVALENT

Findings:.....

Recommendations:.....

.....
Award.....

.....
.....

Date:.....Signature:.....

.....

Rank, Name and Number

d. GENERAL OFFICER COMMANDER OR
EQUIVALENT

Findings:.....

.....

Award:.....

.....

.....

Recommendation:.....

Date:.....Signature.....

Rank, Name & Number

NOTES

1. If the charge is not dismissed or dealt with summarily, enter the space provided the decisions made e.g:-

- a. Remanded for further inquiries, remanded for
- b. Remanded (in Close/Open arrest) for further inquiry)
- c. (for summary/abstract of evidence) (for trial) on election of accused) case referred to higher authority.

2. Subject to note, 3 charge reports in respect of which an accused has Been found guilty will be retained in the Orderly Room for one year after date of.....

ANNEX B TO
CHAPTER 4
MILITARY LAW
LECTURE NOTES

SPECIMEN QUESTIONS

1. What is a charge?
2. What legal requirements must be met in accusing a person that he has committed an offence under AFA 105 of 1999?
3.
 - a. What is a statement of offence?
 - b. What is the relationship between particulars of offence and statement of offence?
4. 2Lt Wari Dipriye refuses to report as a duty officer at 0800 hrs on Wednesday being 13 Nov 96, goes to the Mess and drinks on credit. He slaps the Barman who reminds him of the PMC's directives that drinks should not be taken on credit.
 - a. What offence or offences has he committed?
 - b. On reporting the offence the officer is charged with drinking on credit and refusing to pay and slapping the Barman in one charge.
Comment.
 - b. Frame one correct charge against 2Lt Warri Diepriye.
5.
 - a. What is the difference between multiple charges and duplicitous charges?
 - b. Why are they not allowed?

ANNEX A TO
CHAPTER 5

DISCIPLINARY POWERS OF
COMMANDERS

TYPE OF TRIAL

SERIAL NO	LEVEL OF COMD	Summary Trial Officer	Summary Trial Warrant Offrs, NCO, Sldrs	Court Martial
(a)	(b)	(c)	(d)	(e)
1.	Coy Comd or Equivalent	BELOW CAPT b. Dismiss case c. Confinement max 7 days d. Extra duty e. Max 7 days d. Admonition	BELOW SGT c. Dismiss case b. IHL in unit gd room max 7 days g. Extra duty max 7 days h. Confinement max 7 days e. Stoppages max ₦ 250.00 i. Reprimand g. Admonition	If detached may convene special CM
2.	Bn Comd or Equivalent	BELOW MAJOR j. Dismiss case b. Fine max ₦ 500 c. Stoppages max ₦ 2, 500.00	BELOW MWO k. Dismiss case i. Dismiss regt (Cpl & below) m. IHL max 28 Days (Cpl & below) n. Reduction in rank (1 Step for sgt and below) o. Forfeiture of pay max 7 days p. Stoppages q. max ₦ 500 r. Confinement max 21 days h. Extra duties max 7 days i. Reprimand, severe reprimand j. Admonition	May convene and confirm findings and awards of special CM review those from subordinate Comds on appeal petition
3.	Bde Comd Or Equivalent	LT COL AND BELOW a. Dismiss case b. Fine max ₦ 1000 c. Forfeiture max 30 days d. Stoppages max ₦ 3, 000	BELOW MWO a. Dismiss case b. Dismiss regt (S/Sgt & below) c. IHL 28 days d. Reduction S/sgt below max 2 steps e. Fine max ₦ 200 f. Stoppages max ₦ 2, 500.00 c. Forfeiture of pay 30 days h. Severe reprimand, i. Admonition.	Convene and cfms GCM Review those subordinate Comd on Appeal/Petition
4.	GOC or Equivalent	COL AND BELOW a. Dismiss case b. Fine max ₦ 2000 c. Forfeiture of max 60 days d. Stoppages max N 5000 e. Severe reprimand, f. Admonition	MWO AND BELOW a. Dismiss Case b. Dismiss regt (WO & below) c. IHL 28 days d. Reduction (WO & below) e. Fine max ₦ 250 f. Forfeiture 28 days g. Severe reprimand, reprimand h. Admonition	“ “
5.	COAS and Equivalent	Reviews summary findings and awards upon petitions.	Reviews summary findings and awards upon petitions	“ “

ANNEX B TO
CHAPTER 5
MILITARY LAW
LECTURE NOTES

SPECIMEN QUESTIONS ON DISCIPLINARY
POWERS OF COMMAND

1. Comment on the following:
 - a. Cpl Mike Onuorah of 211 Mech Bn has lost the unit bicycle valued at N3,000.00. The CO prefers to try him summarily than to court martial him; since in his view the offender's salary easily covers the cost of the bicycle and the soldier could be ordered to pay for the loss.
 - b. CO 212 Mech Bn tried and reduced Sgt Goyip Langkop to Pte on the charge of making a fake report of a patrol on which he did not go.
 - c. Ssgt Joseph Kur of A Coy 213 Mech Bn intentionally breaks radio silence and sends a classified message in clear and thus aids the enemy by providing him vital information. Due to exigency of service, the OC convenes a Courts Martial which convicts and awards Ssgt Kur 18 months imprisonment.
 - d. Lt Col Babalola Jimoh who is Acting Bde Comd found Capt Edet Akpan guilty of conduct to the prejudice of service discipline and awards him 4 weeks extra duty to be performed at HQ 1 Mech Div. He explains that this will sober Capt Edet Akpan up from excessive drinking and smoking.
 - e. CO 212 Arty Regt tried Gnr Ali Adamu on 3 charges of stealing, insubordinate behaviour and AWOL. He awards him (Adamu) severe reprimand for insubordinate behaviour, dismisses him regiment on AWOL and refers him to Court Martial for stealing service bicycle.

ANNEX A TO
CHAPTER 6
MILITARY LAW
LECTURE NOTES

SPECIMEN QUESTIONS

1. a. What is summary of Evidence?
b. How does it differ from Abstract of Evidence?
2. a. Who takes a Summary or Abstract of Evidence?
b. When is it taken?
c. What is the purpose or object of a Summary or Abstract of Evidence?
3. a. How is evidence classified?
b. A girl of 15 years gives evidence that the accused rape her and shows bleeding/scars on her thighs as evidence. Although her Aunt who is 25 did not see the cut she testified that she discovered the girl's blood soaked pants near a hut where the accused raped her.
 - (1) What is the evidentiary value of the scar, and the soaked pants.
 - (2) Can the evidence of the Aunt corroborate that of the victim?
4. a. What is the most important duty imposed on the prosecution in a criminal trial?
b. What is the difference between 'admission' and 'confession'
c. What is Judicial notice?
d. How does the prosecution obtain a conviction?
5. a. In some cases competent witnesses are not compellable. List such categories of person.
b. What reasons make a person not to be a competent witness?
6. a. What are the various types of Courts Martial?
b. What power do they have.

- c. What are the main differences between the types you have mentioned?
- 7.
 - a. What are the factors that the convening officer may bear in mind when deciding the type of court to convene?
 - b. What possible information is the accused given to assist him in preparing his defence.
- 8.
 - a. What are the powers of a confirming authority?
 - b. Who are those disqualified from membership of a court martial?
- 9. Respond to these statement
 - a. A Judge Advocate can sit with the court during deliberation.
 - b. The accused pleads in bar of trial that his CO, who is his Uncle condoned his offence a year ago.
 - c. A GCM has sentenced the accused to death on a charge of murder, since the President said that the vote “overwhelming” is 8 to 1 in favour of the sentence.
 - d. You are the defending officer and the accused decides not to enter a defence since he claims it is a forgone conclusion.
 - e. In a SCM the Det Coy Comd makes a Lieutenant the President of the Court Martial since “ all the Captains cups are full: You are the accused.
- 10. Write short notes on:
 - a. Arraignment.
 - b. Trial procedure.
 - c. Liaison Officer.
 - d. Confirmation.
 - e. Plea in bar of trial.

ANNEX A TO
CHAPTER 7
MILITARY LAW
LECTURE NOTES

SPECIMEN QUESTIONS ON LAW OF WAR

1. What is the origin and purpose of the Law of War.
2. Discuss the sources of the Law of War.
3. Define any five of the following:
 - a. Protecting Power.
 - b. Combatants
 - c. Party to a treaty
 - d. Lieve en masse
 - e. Civil defence
 - f. Military Necessity.
4. Highlight principles that should guide the treatment of prisoners of war.
5. Outline measures and decision that must be taken by Military Commanders and Civilian authorities when multinational forces operate in a foreign State.
6. Mention any 6 prohibited deceptions.
7. Mention 10 grave breaches of the Geneva convention in respect of the treatment of civilians.

ANNEX A TO
CHAPTER 8
MILITARY LAW
LECTURE NOTES

SPECIMEN QUESTIONS ON GENERAL MILITARY LAW
PROBLEM SOLVING

1. It is now 18 months since Cpl Boyi was reported missing from his place of work. Efforts by the Unit and his family to trace him have not yielded success. It is strongly suspected that he was killed by “June 12” agitators on his way back from work. His NOK is now pressing on the unit for his entitlements. What are those entitlements? As the unit Adjutant:
 - a. Explain to the NOK the entitlement due to him.
 - b. Show how you will process any 2 of the entitlements, including Military law books and instruments you would need, use or require as appropriate.
2. WO Goshak recently posted to HQ 3 Armd Div opted to stay in his personal house at Anguwan Rukuba. He has now applied to 3 Div Camp to be published and paid Housing Allowance. The Chief Clerk on the instructions of the RQMS refuses to take the application. WO Goshak has now reported the Chief Clerk to you, accusing him of favoritism. As 3 Div Camp, AO how will you handle the situation.
3. 93NA/1618 Pte Mercy lives on the second floor of a barrack accommodation along with other soldiers. The Block NCO Sgt Ahmadu lives on the ground floor. Recently Pte Mercy came to you, as the Unit Adjutant sobbing and reported that Sgt Ahmadu has been making passes at her and on 3 occasions had deliberately busted into the general bathroom upstairs to meet her naked. She admits that the door into the bathroom is faulty and cannot be locked but she claims the visits by Sgt Ahmadu were deliberate and well timed to embarrass her. You have interviewed Sgt Ahmadu who claims that in all

those occasions he was merely on routine inspection. Show how you will resolve the issue.

4. a. HQ 3 Armed Div has received a copy of a petition to HQ NACMP against one of the Unit Commanders in 3 Armd Div, by one Mr. Chike Oba who claims to be a Businessman. He claims the Commander forcibly ejected him out of his accommodation in a bid to assist a retired military colleague. He claims that the Unit Commander forcibly removed the sum of N55,000.00 from his premises and carted away drinks and label drinks worth over N285,000.00. He therefore solicits the assistance of the Army authorities to call the commander to order and to order him to make good the total sum of over N345,000.00. However, he did not report to the Police nor sue the commander to the court.

b. Assume the following:

- (1) The petitioner is actually an adulterated drinks producer.
- (2) He is strongly suspected to be harbouring bandits and armed robbers.
- (3) He has several pending cases with the police including a case of production of adulterated drinks.
- (4) His tenancy in the accommodation he refers to is expired.
- (5) The Commander claims to have carried out the ejection as result of an official Op, "Op kobo".
- (6) A soldier in the Commander's Unit is behind the entire petition.

c. The Col AQ is absent and the GOC wants you to give him your views.

d. What areas would you consider?