**HANDOUT 5**

**UNIT 5: THE REPEAL OF LAWS**

**5.1. REPEAL OF LAWS**

**5.1.1. GENERAL CONCEPTS**

Repeal of law is a revocation of an existing law by legislative act. In other words, **repeal of law means making the law no longer have a legal effect** [Garner; 2004: 1325]. What are the general concepts with regard to repeal of laws?

**The law making process discussed above basically relates to the manner in which a certain normative standard is legalized or converted into a rule of law.** What we will now be discussing under this part relates to **the opposite process of making a law that is delegalizing a certain normative standard that had been part and parcel of the law of the land**. Note should be made here that **the process of delegalization is equally the task of the law making organs discussed above and implies a more or less similar process** as the one described for the making of laws.

Is there a difference Between Repeal and Expiry of Laws?

**A law (statute) is either perpetual or temporary.** It is **perpetual when no time is fixed for its duration, and such a statute remains in force until its repeal,** which may be express or implied. A perpetual statute is not perpetual in the sense that it cannot be repealed; **it is perpetual in the sense that it is not abrogated by elapse of time or by non-user**. **A statue is temporary when its duration is only for a specified time, and such a statute expires on the expiry of the specified time unless it is repealed earlier.** Simply because the purpose of a statute, as mentioned in its preamble, is temporary, **the statute cannot be regarded as temporary when no fixed period is specified for its duration.** **Cessation of transitional legislative power has no effect on the continuance of a perpetual Act enacted during the continuance of that power. The duration of a temporary statue may be extended by a fresh statute.**

But it appears that after a temporary statute expires, it cannot be made effective by merely amending the same. **The only apt manner of reviving the expired statute is by re-enacting a statute in similar terms or by enacting a statute expressly saying that the expired Act is herewith revived.**

**Who May repeal Laws?** **A power to make a law with respect to the topics committed to Parliament or State legislatures carry with it a power to repeal laws on those topics.** Subject to any constitutional restriction, the general rule is that “**the power of a legislative body to repeal a law is co-extensive with its power to enact such a law**” and a legislature which has no power to enact a law on a particular subject matter has also no power to repeal the same.

**What parliament has done parliament can undo.**

A law may be repealed by a latter “distinct and repealing enactment or an enactment inconsistent and irreconcilable therewith.” Putting in other words, **no repeal can be brought about “unless there is an express repeal of an earlier act by the latter Act, or unless the two Acts cannot stand together.”** Repeal may thus be express words of a later statute or may be implied on considerations of in consistency, or irreconcilability of the provisions of an earlier statue, with those of a later statute. **A power “to amend or repeal” will, therefore, imply a power to amend or repeal by implication, i.e., by making inconsistent laws.** Repeal, express or implied, cannot be brought about by subordinate legislation, since a power to repeal cannot be delegated. **In Ethiopia, the legislature has the power to repeal laws.**

**5.1.2.) TYPES OF REPEAL [What is Law?]**

The repeal of laws may be EXPRESS or IMPLIED

**5.1.2.1.) EXPRESS REPEAL**

**A former statute is said to be expressly repealed where the new repealing statute refers to the whole or a part of this former statute and withdraws its obligatory force and thereby denies it further effect as law.** For a new law to be said to have expressly repealed a former law, moreover, the reference it makes to the former law must be clear and exact in relation to what extent or proportion it is no longer operative.

**Example: consider Art. 319 of the Revised Family Code of FDRE Article 319- Inapplicable Laws**

1) The following provisions shall not be applicable in the administrations [Dredawa and Addis Ababa] where this Code applies:

(a) provisions of the Civil Code of 1960 on Persons (Book One, Articles 198- 338);

(b) provisions of the Civil Code on Family and Successions (Book Two, Articles 550-825).

It clearly indicates the provisions of the Civil Code that it repeals, and therefore, it is an express repeal.

The above provisions repeal the indicated provisos of the 1960 Civil Code.

**Apart from the total and partial express repeals, there is also a third type of express repeal is only a variety of the partial express repeal,** it is distinguished from it by the fact that **it does not withdraw the obligatory force of the substance of the former law but only restricts the scope of applicability of the substance of this former law.** This means that it only affects the **so-called “extent clause**” **of the former law and leaves the rest of its provisions intact.** If, for example, a statue used to exist that had applied to all the coffee producing regions of Ethiopia with respect to the price of coffee beans and a new statute was enacted subsequently which provided that the former statute on the price of coffee beans **was no longer applicable in the Harer and Sidamo such a new statute would be said to only have affected the “extent clause” of the former statute and repealed (and thereby restricted) its former scope of applicability**.

The use of any particular form of words is not necessary to bring about an express repeal. The usual form is to use the words **“is or are hereby repealed” and to mention the Acts sought to be repealed in the repealing section or to catalogue them in a schedule.**

The use of words **“shall cease to have effect” is also not uncommon.** When the object is to repeal only a portion of an act, **words “shall be omitted” are normally used.** When a new **provision is substituted for an existing provision, the result is an express repeal of the existing provision and enactment of a new one in its place.** In such a case even if the re- enacted provision be later declared invalid, it may not have the effect of reviving the old provision. The result may be different in the case of a mere suppression of an existing provision by a new provision and a declaration of invalidity of the new provision may revive the superseded provision. An amending act, which limits the area of operation of an existing Act by modifying the extent clause, results in partial repeal of the Act in respect of the area over which its operation is excluded. The legislature sometimes does not enumerate the Acts sought to be repealed, and only says that **“all provision inconsistent with this Act”** are hereby repealed.

**Article 319- Inapplicable Laws 2) Any laws, regulations, directives, decisions or practices inconsistent with this Code shall not be applicable on matters provided in this Code.**

With respect to such a repealing provision it has been said that it merely substitutions for the uncertainty of the general law an express provision of equal uncertainty; and in determining whether a particular earlier provision is repealed by such a repealing provision on the ground of inconsistency with it, the same principles which are applicable in determining questions of implied repeals have to be applied. Where the act repealed provides substantially for all matters contained in the act effecting the repeal there is correspondence between the two Acts, and the earlier act would thus be repealed. **It is not necessary that there should be complete identity between the repealing Act and the Act repealed in every respect. There will, however, be no “correspondence” and therefore no repeal, where the two acts are substantially of differing scopes.** However, it is possible that there may be a partial correspondence resulting in a partial.

**5.1.2.2.) IMPLIED OR TACIT REPEAL A) General**

**Law may be repealed impliedly or tacitly. There is a presumption against repeal by implication; and the reason of this rule is based on the theory that the legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter, and therefore, when it does not provide repeal the existing legislation explicitly, the presumption is that it repeals the previous law.**

When the new law contains repealing section mentioning the laws, which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle EXPRESSIO UNIS EST EXCLUSIO ALTERIUS. The presumption is, however, rebutted and **repeal is inferred by necessary implication when the previsions of the later Act are so inconsistent or repugnant to the provisions of the earlier Act “that the two can not stand together”. Nevertheless, if the two may be read together and some application maybe made of the words of the earlier Act, a repeal will not be inferred.** It is indicated that the test applied for **determining repugnancy .....**., may be applied for solving a question of implied repeal and that it should be seen:

1. **Whether there is a direct conflict between the two provisions;**
2. **Whether the legislature intended to lay down an exhaustive Code in respect of the  subject-matter replacing the earlier law;**
3. **Whether the two laws occupy the same field.** The doctrine of implied repeal is intended on the part of the legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does no more give effect to the intention of the legislature by examining the scope and the object of the two enactments and by a comparison of the two Acts. A recital in a later Act that it was not repealing an earlier Act will be of no avail if the later act enacted which was quite contrary to the earlier Act, and the earlier act would stand repealed as effectively as if it had been expressly repealed. **Repeal by implication is just as effective as by express words.**

B) Prior Particular Law and Later General Law

**A prior particular or special law is not readily held to be impliedly repealed by later general enactment.** The particular or special deals only with a particular phase of the subject covered by the general law, and, therefore, reconciliation is normally possible between a prior particular act and a later general act and so the particular Act is construed as an exception or qualification of the general Act

**Where general words in a later Act are capable or read able and sensiblc application with out extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.**

However, there is no rule that prevents to repeal a partial prior law by the subsequent general law. **It is only the principle of construction we use**.

C) Prior General Law and Later Particular Law

**A prior general Act may be affected by a subsequent particular act if the subject matter of the particular Act prior to its enforcement was being governed by the general provisions the earlier Act.** In such a case, **the operation of the particular Act may have the effect of partially repealing the general Act, or curtailing its operation, or adding conditions to its operation for the particular cases.** In other words, the latter particular law may have the effect to amend or repeal the prior general law on the same subject matter.

D) Laws defining offences and penalties

**If a later statute again describes an offence created by an earlier statute and imposes a different punishment, or varies the procedure, the earlier statute is repealed by implications...** The principle, however, **has no application where the offence described in the later act is not the same as described in the earlier Act, i.e., when the essential ingredients of the two offences are different.....**.In short, a new law may repeal the existing criminal law even if there is no a specific reference to the effect of repeal.

Why we did an implied repeal?

Repeal by implication is a matter of construction and is a very striking instance of ‘control’ exercised by the courts over the operation of a statute. It is a common law rule that LEGES POSTERIORE PRIORES CONTRARIAS ABRAGANT. **The principle is that the new law prevails over the old law. Thus, if the new law is inconsistent with the old law, the old law is considered as repealed, because one of the principles making a law is to make a change in the law.**

**5.1.3) EFFECTS OF REPEAL**

**If a law is repealed it is considered as if it had never been enacted.** Thus, **no obligation and duty arise out of the repealed law**. Another effect of repeal of law is that **if one Act is repealed by a second which again is repealed by a third the first Act is not revived unless the third Act makes an express provision to that effect.** It is understood from this that a third law that **repeals the second may revive the first law.**

**In spite of the repeal of law rights accrued and liabilities incurred may be intact and it may permit continuance of institution of any legal proceeding or recourse to any remedy** which may have been available before the repeal for enforcement of such rights and liabilities. **Thus, offences committed during the continuance of statues can now be prosecuted and punished even after it is repealed.**

Making the distinction between what is and what is not a right preserved is essential. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere “hope or expectation of “, or liberty to apply for acquiring a right. A distinction is drawn between a legal proceeding from enforcing right acquired or accrued and a legal proceeding for acquisition of a right. The former is save while the latter is not.

What is the effect of repeal of legislation on subordinate ones? As a consequence of the general principle that a statute after its repeal is as completely effected for the statute book as if it had never been enacted, **subordinate legislation made under a statute ceases to have effect after repeal of the statute.** This result can be avoided by insertion of saving clauses providing the contrary.

**5.1.4) EXPIRY OF LAWS**

What do we mean by expiry of laws? What is a distinction between repeal and expiry of law? A distinction is to be drawn between repealed and expiring statues. **The difference in effect between these two kinds of laws is that repealed statues, except so far as they relate to transactions already completed under them, become as if they never existed, but with respect to temporary statutes, the extent of the restriction imposed by them becomes a matter of construction.** The question sometimes arises whether a temporary statute which has lapsed still apples to acts or things done, **for instance, the crime committed before it ceased**. This can be determined only by reference to the exact language of the enactment, which should be clear and unambiguous on such a vital point, but unfortunately is not always so.

**5.1.4.1) CONSEQUENCES OF EXPIRY**

The effect of expiry of law depends upon the construction of the Act itself.

**A) Legal proceedings under expired statute**

A question often arises in connection with legal proceedings in relation to matters connected with a temporary Act whether they can be continued or initiated after the Act has expired. The normal rule is that **proceedings taken against a person under a temporary statue IPSO FACTO terminates as soon as the statute expires**. **A person, therefore, cannot be prosecuted and convicted for an offence against the act after its expiration in the absence of a saving provision, and if a prosecution has not ended before the date of expiry of the act, it will automatically terminate as a result of the termination of the Act.**

**B) Notifications, Orders, rules, etc. made under temporary statute**

When a temporary Act, expires the normal rule is that **any appointment, notification, order scheme, rule, form or by-law made or issued under the Act will also come to an end with the expiry of the Act, and will not be continued even if the provisions of the expired act are re-enacted.** Similarly, a person’s detention under a temporary statue relating to **preventive detention** will automatically come to an end on the expiry of the statue.

**C) Expiry does not make the statute dead for all purposes**

A temporary statute, even in the absence of a saving provision ... is not dead for all purposes. As already stated the question is essentially one of construction of the Act. **The nature of the right and obligation resulting from the provisions of the temporary Act or their character may have to be regarded in determining whether the same right of obligation is encoring or not.** Thus, a person who is prosecuted and sentenced during the continuance of a temporary act for violating its provisions cannot be released before the person serves his/her sentence, even if the temporary Act expires before the expiry of full period of the sentence.

**5.1.4.2) REPEAL BY A TEMPORARY STATUTE**

When a temporary statute effects a repeal of an existing statute a question arises weather the **repealed statue revives on the expiry of the repealing statue.** The answer to the question, whether a statute which is repealed by a temporary statue revives and the expiry of the repealing statute, **will depend upon the construction of the repealing statute**. As regards the effect of the repealing of an earlier Act made by a temporary Act, **the intention of the temporary Act in repealing the earlier act will have to be considered, and no general or inflexible rule in that behalf can be laid down.** A law, though temporary in some of its provisions, have a permanent operation in other respects..... **If the repealing section in a temporary statute on construction is held to expiry with the expiry of the act, the repeal will be construed as a temporary repeal.**

Does disuse make Law Non-obligatory?

**A law subsists indefinitely as long as its provisions have not been regularly repealed.** Recourse may always be had to it to obtain its execution. **A law may be disused for a long period of time. However, age cannot wither an Act of parliament, and at no time, has it ever been admitted in jurisprudence that a statute might become inoperative through obsolescence.**

“The doctrine that, because a certain number of people do not like an Act and because a good many people disobey it, the Act is therefore ‘obsolescent’ and no one need pay any attention to it is a very dangerous proposition to hold in any constitutional country. **So long as an Act is on the statute book the way to get rid of it is to repeal or alter it in parliament, not for subordinate bodies, who are bound to obey the law, to take upon them selves to disobey an act of Parliament”.**

Thus, the executive body may not be active in implementing a given law and individuals may also use the law. However, the disuse of a law can not make it repealed because it is the legislative body that must repeal the law, not the subordinates.

**5.3) NULLIFICATION OF LAWS**

What do we mean by nullification? What is nullification of law? Who has the power to nullify a given law? Nullification, according to Black’s Law Dictionary [2004: 1098], is **“the act of making something void; specifically the action of a state in abrogating a federal law, on the basis of state sovereignty”.** Thus, nullification is the act of making void. An act may be mollified if it is against the law of the state.

**In common law, juries may nullify law, that is known as jury nullification.** Jury nullification means making a law void by jury decision. It is **“the process where by a jury in a criminal case effectively nullifies a law by acquitting a defendant regardless of the weight of evidence against him or her.”** [Wikpidia, 2008 (August)]. A jury may acquit a defendant despite s/he violates the law in a criminal case. Such a decision has the effect of disabling the enforcement of the law. Thus, it is considered as a means for the people to express apposition to an unpopular legislative enactment [Wikpidia, 2008].

In common law, the jury, since it is established by a group of people to judge a give case, the a group of people to judge a given case, **the members would be less likely to be corrupted since they are working for a short period of time; it would be more likely to render a just verdict.** Jury nullification is believed to give an opportunity to take a dissenting view about the justness of a statute or official practices [Wikpidia, 2008].

However, **it is essential to note that sympathy, bias or prejudice can influence some juries to wholly disregard evidence and instruction and thereby acquit the defendant.** Jury nullification is a de facto and traditional power of juries that is not normally disposed to juries by the system when they are instructed as to their rights and duties.

Jury nullifications is debatable. Some argue that it is an important safeguard of last resort wrongful imprisonment and government tyranny. However, others maintain if as an abuse of the right to a jury trial that undermines the law. Some consider it as a violation of the oath sworn to by jurors, while others view the requirement that jurors take an oath to be unlawful. Others still view the oath’s reference to “deliverance” to require nullification of unjust law [Wikpidia, 2008]. In general some argue in favor of jury nullification while others maintain it as an act as a violation of jurors duty.

As Doug Linder [2001] explains, **a jury nullifies a law that it believes is either immoral or wrongly applied to the defendant.**

Jury nullification, in general, **“means that a jury finds a defendant innocent because the law itself is unjust, or is unjust in a particular application, and should not be applied”.**

But what is the relationship between jury nullification and rule of law? Does nullification contradict the rule of law? It is argued that nullification is not a violation of the rule of law. But what are the reasons for that? First and for most, **nullification is part of the rule of law. A law is nullified if it is unjust. It is said that “an unjust law is no law at all.”** [Doug Linder [2001].

However, the problem is who can judge whether a given law is unjust? In common law, jury (the group of persons) could judge whether a given law is unjust, and that is the principle of moral conscience. The rule of law is not an injunction to blind obedience rather it is a principle of the limitation of the authority of government [Doug Linder [2001].

In addition, the rule of law basically means to be “ruled by laws, not by men” However a jury nullifying a law does not engage in ruling. Jury engages in negating the instructions and actions of government. The rule of law also is meant to limit the actions of individuals in the government authority, because the principle requires actions to be as specified by the law. The rule of law denies to government unlimited or discretionary power and authority. **Thus, the rule of law is part of a system of checks and balances to prevent dictatorship and despotism.**

In Ethiopia, if the law contradicts the FDRE constitution, it will be nullified by the House of Federation, not by a jury or the court.

**CONCLUSION**

We have seen that **law making is establishing a new rule of law on a particular subject. We have seen that it is the legislature, which is empowered to make laws in Ethiopia.** We have also seen that the executive body, particularly, **the Council of Ministers is given the power to enact Regulations. Further, we have discussed that each ministry has the power to enact directives.**

With regard to the steps in law making, we have seen that **a draft should be prepared first. Then, discussion will be held. After that, the draft could be indorsed and it will become law. The law will also be published.**

We have seen that **repeal of law means making the law no longer have a legal effect. We have observed that a law could be perpetual until it is repealed.** The principle is that **a body that has a power to enact a law has also a power to repeal the same.**

We have discussed that **repeal of laws may be express or implied.** **A repeal of laws is said to be express where the law is replaced by a law by specific declaration to that effect. On the contrary, an implied repeal of law is repeal by irreconcilable conflict between an old law and a recent one.**

With regard to the effect of repeal of laws, we have observed that **all right and legal actions will be vanished. The first law may provide expressly to that effect.**

Further, we have discussed that **expiry of law automatically terminates a legal transactions. However, the rights or obligations may continue notwithstanding the expiry of a law if their nature determines.** Finally, we have seen that **disuse of a law does not wither away it.**