

Addis Ababa University

College of Law and Governance Studies

**Introduction to Law and
Ethiopian Legal System**

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Part I: Introduction to law

In this part of the course, we will discuss about:

- ✓ The nature and functions of law
- ✓ The major legal stems of the world
- ✓ The various classification of law
- ✓ The different sources of Ethiopian laws
- ✓ The processes of law making
- ✓ Hierarchy of law
- ✓ Interpretation of law
- ✓ Amendment and repeal of laws
- ✓ Juridical acts

Unit One: Nature and Function of Law

Objectives

- After completing this chapter, students are expected to:
 - Define law;
 - Analyse the various theories of law;
 - Explain basic feature of law;
 - Identify the purposes/functions of law;
 - Distinguish between legal norms and non-legal norms.

Definition of Law

- Despite there are various attempts to define the term 'law', so far there is no universally acceptable and an all convincing definition for it.

Black's Law Dictionary defines law as:

- ***Body of rules of action or conduct prescribed by controlling authority, and having binding legal force.***

Cheessman defines law as:

- A body of rules of action or conduct that must be obeyed and followed by citizens subject to ***sanctions*** or ***legal consequences***.

THEORIES ON LAW

- To better appreciate the concept/nature/meaning of law, it is important to consider the different schools of thought or theories on law.
- There are different schools of thought about law dealing on the nature, objective, and source of law.
 - Natural law theory
 - Positivist
 - Realist theory (Legal Realism)
 - Marxist theory of Law

1. Natural Law Theory

- It is the oldest of all schools of thought.
- It originated in ancient Greek.
- Greece philosophers like Socrates, Plato, and Aristotle developed it.
- According to the philosophy of followers of this school, there are two sets of laws that govern the relation of the human society.

- These are ***natural law*** which is eternal and unchangeable and the ***man made law*** which differs in space and time.
- The natural law is a set of rules that are given by super natural power- **creator** – in the form of justice and morality and it is to serve as a standard against which ***man made laws are to be tested for their validity.***

- To the extent that human made laws violate natural law, they should be ***null and void*** (don't obey if the state law is contrary to natural law).
- For this theory on law, the man made law must follow universal principles of morality, justice and fairness.

- But in reality this is not true, since we do have various man made laws that may not equate with *morality* or *justice*.
- No agreement on what *justice* is.
- E.g. Legality of abortion, homosexuality, nationalizing private property.

2. The Positivists School of Thought

- Positive law theory is also called, *imperative* or *analysts* law theory.
- This school of thought, founded by ***Thomas Hobbes*** and which got predominance in the 19th and 20th c *sharply separates law from morality and justice*.
- It sharply opposes the natural law theory.

Cont'd

- It has the belief that.... law is *the rule made and enforced by the sovereign body of the state* and there is no need to use reason, morality, or justice to determine the validity of law.
- According to this theory, rules made by the sovereign are laws irrespective of any other considerations.

Cont'd

- A typical definition adopted by this school of thought is that: “law is a command of a political sovereign backed by sanction”.
(Austin)
- In this definition, we can see three important elements. That law is a **command, command of a political sovereign** and it is backed by **sanction**.

Cont'd

- In the above definition, *a command is the sovereign's expression, desire, order or imperative direction* that a person act or refrain from acting in a certain way.
- *The political sovereign puts the laws by way of commands to the subjects who shall obey the laws* without having regard to the contents on the law, i.e. *whether it is just or unjust, right or wrong, moral or immoral.*

Cont'd

- The “**Political sovereign**”-is the source of the law according to the positivists.
- The positivists define the political sovereign as “a person or body of persons or politically supreme organ that the bulk of the society habitually obeys and who doesn't himself obey any person or organ.”

Cont'd

- The subjects or citizens have to obey the law not at their own wish but at the pain of **penalty(sanction)**.
- If and when people fail to observe the law, which is handed down in the form of command, they will be subject to punishment.

Positive Values and Defects

- Legal positivism serves two values:
First, it ensures that the government will explicitly apprise the members of the society of their rights and obligations.
- In legal system run in strict accordance with positivist principles, litigants will never be surprised or burdened by the government imposition of an unwritten legal obligation that was previously unknown and non-existent. I,e all Laws are written

Cont'd

- ***Second***, positivism curbs judicial discretions. This theory of law doesn't allow an appeal to equity and principles of natural justice by courts whenever they are not satisfied with the outcome of a case that would be dictated by the orthodox application of the existing laws.

Cont'd

- **Defects of this theory:**

First, it equates all laws with commands, which is not always valid.

- Some sections of the law may be in the form of command but not all. For example do not steal! ; Do not commit adultery! ; Come to rescue a person at peril! are rules of the law which are in the form of command.

Cont'd

- But we have also right or power conferring rules which are not in the form of command.
E.g. Right to marry, right to property...etc.
- A sanction is not necessarily applicable in these cases.
- ***Second***, it associates all laws with a sovereign political authority.

Cont'd

- For the positivists, ***all laws emanate from the sovereign*** though this doesn't always hold true.
- For instance, ***customary laws*** do not emanate from the parliament or other organ rather from habitually repeated practice over a long period of time.
- **International law** is also an example.
- ***Third***, this theory views the sovereign as **unlimited and unaccountable** to anyone whereas today every government organ is legally limited and is accountable to the public.

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- *Fourth*, it divorces law from the ethical foundation of equity, justice, morality and fairness.
- This separation of law from principles of justice, fairness and equity has resulted in the erosion of the human value and disintegration and collapse of social systems.

Cont'd

- The extermination of the Jews by Nazi Germany, the discriminatory treatment of Black Americans in America and..... Blacks in South Africa under the Apartheid regime were all carried out by issuing law inspired by positivist thinking.
- So, the theory of legal positivism with these shortcomings is not complete and universally acceptable.

3. Realism School of Thought

- **This theory has its basis in the common law legal system** in which the decision previously given by a court is considered as a precedent to be used as a law to decide future similar case.
- Realist theory of law is interested in the ***actual working*** of the law rather than its traditional definitions.

Cont'd

- It provides that law is what the judge decides in court.
- Here, ***rules not put to use to solve practical cases are not laws*** but merely existing as dead words and **these dead words of law get life only when applied to a case.**
- Hence, *it is the decision given by the judge but not the legislators' that is considered as law* according to this theory.

Cont'd

- Proponents of this theory believe that the lawmaker is the judge and not the legislative body.
- It is for the courts to **define, refine and delineate the scope of the law** given by the parliament and that which is worked out by the court in this way is the law.

Cont'd

- This theory is **not prevalent in civil law legal system**, which is the other major legal system of the world.
- Currently some **exception is developing** E.g. cassation court decision (Ethiopia)
- The theory of legal realism **hardly escaped criticisms.**

Cont'd

- The theory's central theme is that the *rules and principles laid down by the parliament can not be considered as a law proper until it is interpreted and pronounced by the courts.*
- So, this theory views the courts as the real lawmakers.

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- But this severely violates the well established and operating constitutional principle of *separation of powers and functions.*
- Also the theory creates *uncertainty* on the parties in dispute, and unpredictability of court rulings.

4. Marxist Theory

- Marxists believe that **private property is the basis for the coming into existence of law and state.**
- They provide that property was the *cause for creation of classes in the society* in which those who have the means of production can exploit those who do not have **by making laws to protect private property.**

Cont'd

- They base their arguments on the fact that *there was neither law nor state in primitive society for there was no private property.*
- The theory has the assumption that people can attain a perfect equality at the communism stage in which there would be no private property, no state and no law though it is yet no attained.

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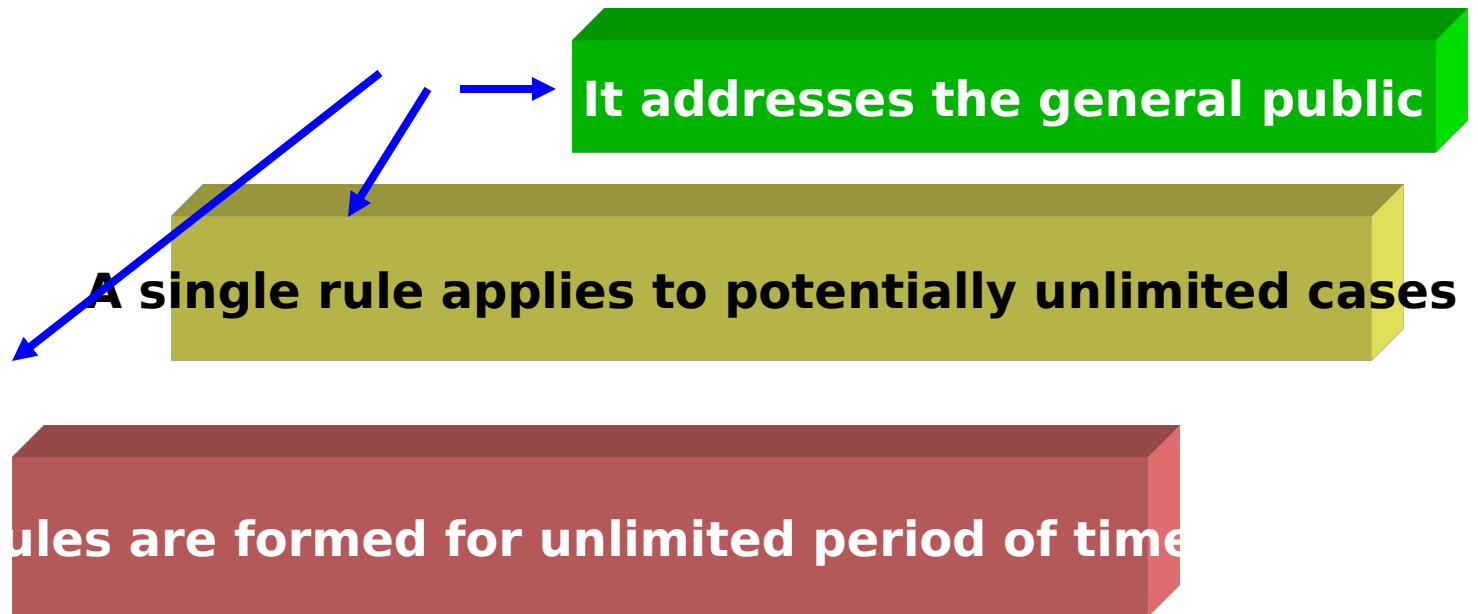
- The Marxists define law as *an instrument of the economically dominant group in a class society to perpetuate its dominance.*
- They believe that law emerged with the emergence of state to serve the interest of the economically upper class.
- The Marxists like the positivists and Realists agree that law is man made.

Cont'd

- It is with the coming of the system of private property that class societies(Law) come in to existence and *it will disappear in the future when classless society emerge at communism stage of the evolution of society.*

1.2 Basic Features of laws

A. Law is general



- *Laws do not deal with a particular person that is, they are not meant to regulate the behavior of a specific person.*

Eg.

- “Every one has the right to life, liberty and security of person.”
- “Every Ethiopian Citizen has the right to the ownership of private property”
- Every person who is above 18 years has the right to vote.
- The president may not be elected for more than two terms of office.

Generality of law is important:

- Uniformity and equality before the law could be achieved (persons to be governed by the same law will be treated equally)
- Gives the law to have the nature of relative permanence

B. Normative nature of laws

- Law has a normative (**binding**) behavior.
- A statement of the **law is not a mere description of things or facts.**
- Law does not simply describe or explain the human conduct; **it is made to control and** shape the human behavior in one way or the other.
- Law creates norms by allowing, ordering or prohibiting the social behaviour.

Cont'd

- Normative nature of law includes rules such as: Permissive, Directive, Prohibitive and Rewarding legal norms.
- Every person has the right to marry or not to marry (**permissive/allowing rule**)
- Art 547 penal code "*Every one has the duty to come to rescue a person in imminent and grave peril of his life, person or health*" (**directive/ordering rule**)

Cont'd

- Art 9(1) Revised Family Code : *“Marriage between persons related by affinity in the direct line (close relatives) is prohibited”*. (**Prohibitive**)
- Investors who invest in basic investments in Ethiopia are exempted from paying excise tax when importing necessary machines. (**rewarding rule**).

Cont'd

C) Law regulates social behavior (man to man r/ship)

It does not worry for possible relations that man might have with other entities...

D) Law is intimately related with the state (inseparable)

The three organs of government play role in making, interpreting and enforcing the law.

1.3. Functions of law

- ***Maintaining peace and order:*** if people are to conduct in peaceful manner, law has to be enacted. Otherwise robbery and gang attack will disturb societal co-existence. Criminal law is there to ensure peace.
- ***Regulates social behaviour:*** Law provides how individuals should interact or unilaterally act. Eg., Family law, Law of succession, Contract law.

Cont'd

- *Protecting citizens from arbitrary government action:*

Unless the power of government is limited by law, citizens would become victim of excessive and arbitrary exercise of power by the government.

- *Bringing efficiency and harmony in government functions:*

This is done through separation of powers.

- *Fighting harmful traditional practices: e.g. rape, abduction, early marriage. (By criminal law)*

1.4. Law Vs other categories of social norms

- **Law is not the** only institution that regulates human behaviours or social relations; there are also other social norms....religion, custom, morality....
- Social norms are non- legal norms such as custom, religious principles....
- They have some similarities and differences.

Similarities:

Both are general and normative, i.e. regulate or shape human behavior.

Cont'd

Differences;

- (1) *Enforcement Mechanisms*

Law..... has centralized and institutionalized mechanism of enforcement, the police, public prosecutors, courts...will play a role here.

Social norms....have no centralized and institutionalized enforcement mechanism.

Cont'd

- (2) *Scope of Applications*

Law.... state-wide and uniform application.

A law enacted by the appropriate organ of the state is applicable within the entire territorial jurisdiction of that state (depending upon thier law making power).

Cont'd

- **Social Norms**....scope of application is different from place to place.
- They can not help to govern inter-religious or ethnic group transactions.....it may not govern the relations between members of different customary group or followers of different religions.

Cont'd

- (3) *Exhaustiveness and Clarity of Rules*
- **Law....**is more exhaustive and clearly written. This will create awareness among the society about the rules and possible sanctions.
- This in turn ultimately brings **certainty** in the society's daily life.

Cont'd

- **Social norms....** the contents of customary, religious or moral norms are not exhaustively written and in advance known. Punishments are not also clearly determined in advance.

(4)The Making and Issuance of Rules;

Law.....emanates from a centrally established and defined institution.

It has an authoritative source, it can also be amended or repealed formally whenever necessary.

Cont'd

- **Social Norms** have no traceable/
organized enacting institutions.
 - They are developed out of **repeated practice** of the society.
 - They are usually the results of the society's feelings of what is right or wrong, just or unjust.
 - They are **not easily amenable** whenever the circumstance requires.

Unit Two: Major legal systems in the world

- Every independent country has its own legal system.
- All legal systems have the same **purpose of** regulating and harmonizing human activity.
- Their **difference** lies **in the mechanism** of achieving that end.

Cont'd

- In the world above 200 legal systems.
- But, they are generally classified in to two.
- Common (Anglo-Saxon)=USA, Britain, Canada...
- Civil (continental)=France, Germany, Italy.....

What are the points of comparison of the two?

1. History and Development

Civil: derived from Romans

Common: from England

2. Sources of laws

Civil---- Legislation : made by legislative body

common--- Judicial decisions (case law): made by judges; **precedent**

3. The form they are found

Civil law: written and codified

Common law: not codified

Merits and demerits of the two legal systems

- **Common law**
- Judiciary law is easier to understand
- It is formulated by those who have experience
- Actual concrete problem is solved
- To interpret it, we focus on words rather than intention of legislature
- Come only after the dispute arise
- It can be never complete since it is ex post fac to law
- No test of validity

Civil law

- Statute law is direct and unambiguous
- Concise and definite
- Apply for cases before hand unlike ex post facto law
- Relatively complex and bulky

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- **What about Ethiopian legal system?**
- **As a principle:** statutory laws, codes and other legislations serve as a law
- And in principle, courts in Ethiopia have no power to make law (only apply law), lower courts are not obliged by decisions of higher courts.

- **Exception:** Proc No 454/2005, art 2(1) which reads:

“Interpretation of a law by the Federal Supreme Court rendered by the cassation division with not less than five judges shall be binding on federal as well as regional council at all levels. The cassation division may however render a different legal interpretation some other time”.

- The rationale for this arrangement is to bring **uniform system and application** of the law.

Unit 3: SOURCES OF LAW

- In legal research, the term 'sources of law' can refer to different concepts.
- (1) it can refer to the origins of legal concepts and ideas (**material sources of law**).
- (2) it can also refer to governmental institutions that formulate legal rules. (**formal source of law**).
- (3) it may also refer to the textual context in which the law is found (**literary source of law**)
- **Generally there are three types of sources: Formal , Material and literary(textual) sources of law.**

Cont'd

1) Formal Sources:

- Formal source is a source from which **a legal rule derives its binding force and validity**.
- A legal rule derives its source and validity from the will of the state.
- It is the state which enacts (makes) laws, interprets and enforces them.
- If legal rules were not enacted by the State, they would not have acquired their binding force. Hence, the state is the formal source of law.

Cont'd

2) Material source of Law

- Refers to **the origin of the law or the matter or substance from which it is derived or made up (where the idea originates).**
- It refers to the source ,material or input, which is used to make the law.
- Legislations of other countries, religious doctrines, customary practices, are examples of material sources of law.

Cont'd

- **Types of material Sources of Law:**

- The constitution, proclamations, regulation, directives
- Judicial Precedents (court decisions)
- Customs
- Writings of Jurists (books and journals on law)
- Religious Rules (The Bible, The Koran,) art 34 (5) FDRE, 1(2) and 27(1) family....
- Rules of public morality: art 2030(1) of the Civil Code

Cont'd

➤ ***International Treaties (signed by countries)***

Agreements concluded b/n or among sovereign states.

Art 9(4)=parts of the law of the land and are concluded by the executive organ of the government.

Art 55(12)=ratified by the HPR

Cont'd

- **3) *Literary source:***

Refers to the source where the laws of a country are to be found or the text where they are contained.

For the sake of convenience, for courts, lawyers and academicians, laws shall be codified as much as possible.

1) Customary rules

Cont'd

- **2) Religious rule** : similarly look at art. 34(5) of the constitution and 1(3) of RFc.

3) Rules of Public Morality: see art. 20 30(1) of the C.C.:

“ A person commits an offence where he acts or refrains from acting in a manner or conditions which offend morality.”

Cont'd

4) Legal Texts:

- I) National sources: includes
 - the constitution,
 - Primary legislation (Proclamations).
 - Secondary/subsidiary legislations (regulations and directive).
- ii) International sources, international treaties.

Unit 4: Classifications of Law

- **Classification of law refers to the systematization of the law based on subject matter**
- Hence, grouping laws based on various respects taking some commonalities into account.

Purposes of the classification

- ***To simplify law making process*** (it helps the legislature to conduct its deliberations in specific areas of law)
- ***To make the work of state organs efficient and easy*** (the work of the executive and the judiciary will be efficient because they can easily pick up the provision of the law).
- ***To simplify the study of law at law schools***
- ***To conduct research***

Cont'd

- For **a scientific and systematic study of law**, the law can be classified into:
 - Public Vs Private law
 - International Vs Domestic law
 - Civil Vs Criminal law
 - Substantive Vs Procedural law

I) Public Vs Private law

- **Public law** is a branch of law that governs the relationship between state organs, and between state and private citizens.
 - E.g. The Constitution, the Criminal Law, Tax law, Administrative Law
- **Private law** is the body of law that **regulates the relationship between individuals.**

E.g. Family law, contract law, property law, agency law, commercial law, succession law, tort

II) Domestic Vs International

- **International law** is the principle of laws which governs the relations between countries (States) and some times States and international organizations.
- It concerns about sovereignty, trade, communications, boundary disputes, use of ocean and water bodies and so on.
- Customary practices, treaties and international court decisions are the basic sources of such laws.

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- **National laws** (Domestic Laws) are those laws, whether of **public or private** nature applied inside a country.
- So it includes all laws within a country.
- For instance, the various laws that are adopted by the government in Ethiopia are domestic laws in their nature.

III) Civil Vs Criminal Law

- **Civil law**, is a body of law that governs the interaction between *private citizens(civil matters)*. It is similar to private laws .
- For instance, contractual relations, extra contractual relations, family relations, business relations...etc are civil matters in their nature and governed by civil laws.
- **Criminal law** is the part of public law that **relates to the prevention of crimes and sets penalties.**

IV) Substantive Vs Procedural Laws

- **Substantive laws** are laws (private or public) which **provide rights and obligations**.
 - Right to marry, right to vote, right to privacy...
- All the laws in the Civil Code, Commercial Code, Criminal Code and other legislations do provide rights, obligations and responsibilities.
- **Procedural Laws-** rules enforce **substantive rights and obligations**.
- Without the procedural laws, substantive rights and obligations are dead and ideal words.
E.g. Civil and Criminal Procedure and evidence law.

Defects of Classifications of Laws

- The dividing line between the various classifications is **imprecise and unable to adapt to the complexity and diversity of contemporary social and commercial transactions.**
- The distinction between the state and the individual, upon which the classification rests, is false because **the aim of both public law and private law is to establish rules of law directed at the general interest of society.**

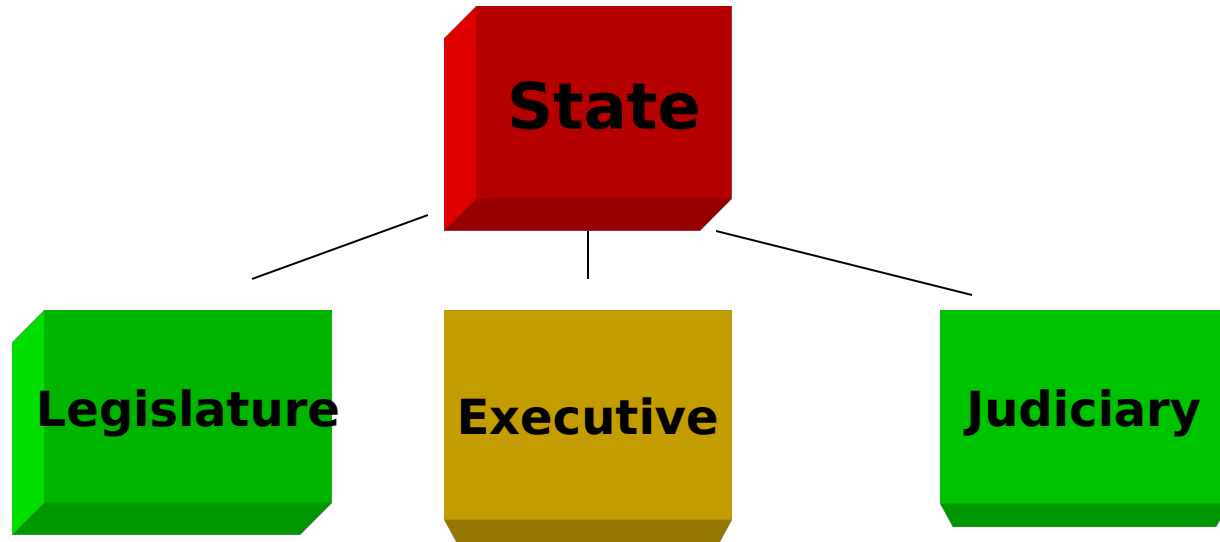
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- The public sector has expanded into industrial and economic activities which are characterized by private law rules, state organs ought to be subject to private law and not benefit from the special regimes of public law.
- The subject classification of law tends to make judges and lawyers to concentrate in one branch of law and ignore the remedies or solutions that may be available in other areas of law.

Unit 5: Law Making Process

- A law making process is the process by which a draft proposal becomes a binding law.
- Generally, it consist of four **stages**.
 - **Initiation** (some body has to prepare a draft, mostly council of ministers).
 - **Enactment** (parliament deliberates, discusses, debates and either accepts, amends, or rejects it)
 - **Signature/ approval** (if approved by parliament, sent to the president for signature or approval by him).
 - **Publication** (after signature it must be published and circulated to the public).

Separation of Power



- **An absolute state with absolute power is bad for the people**
- The power of the state is therefore divided into three organs

Cont'd

- **The Legislature** is the parliament, and its power is to make laws, approve budgets,.. Art. 50(3) and 55(1)
- **Executive branch** is the one with the task of enforcing and implementing the laws for which the prime minister and his cabinet ministers constitute this branch. Art. 72
- **The Judiciary** is the court. It interprets the laws and gives decisions in the event of disagreements. Art. 78

Who Makes Laws in Ethiopia?

- **The legislature** (the HPR) is empowered with this power (Art. 55(1)).
- Laws legislated by this body are known as **proclamations**.
- But since the parliament cannot address all events, it delegates its power to others.
- For example, **the Council of Ministers** (executive branch) is empowered to adopt **regulations Art. 77(13)**
- **Individual ministries and agencies** may make their own internal laws known as **Directives**.

Law making Process in Ethiopia a

Under FDRE Constitution

- ❖ **Forms of legislation issued by federal government**
- ❖ **Proclamations** : major and primary legislations issued by HPR (art 55)
- ❖ **Regulations**: delegated and secondary legislations issued by CMs. Detailed laws.
- ❖ **Emergency decree**: issued by CMs art 93 (1) FDRE constitution during external invasion, breakdown of order, natural disaster, epidemic occur.....it is subject to approval of HPR with in 48 hrs if the house is in session and 15 days if the house is in recession.

Cont'd

- The power to issue decrees comes from the constitution it self, art 77(10) and 93(1)
- **Directives:** laws issued by individual administrative agencies concerning their internal structure and organization, operation.....administrative agencies get the power from proc and regulations.
- Therefore, each forms of legislations have their own stage of law making process. For instances:

Cont'd

Law making process of proclamations

- **A) initiation** : initiating draft bill
- This power is given to d/f organs (members of HPR, CMs (77.11), FSC, trade unions and employers associations.
- All these are submitted to speaker of the house.

Cont'd

- **B. enactment**

1) preliminary reading : the speaker **notifies** the house as to the whole content of the bill and itemized in the agenda and **read** by the person delegated by the speaker to the house.

The house may dismiss or pass the bill after hearing the bill read. If decided to be passed, the vote necessary is 2/3 vote

2) Study by legislative committee

Committee established by HPR.

- 9 standing committees. serve as advisor
- The whole content of the draft is investigated by them.
- Arranges public hearing...and collects opinion of the public
- Then the committee again examine it.

C) Signing stage

- Once approved by the house.....
- Then president has the power to sign
- Art 57....must put his signature.....within 15 days after adopted law is referred to.

D) Publication stage

- In the federal Negarit Gazette.
- Both in Amharic and English.■

Summary on law making...

- **Draft laws are prepared mostly by concerned ministry** and passes to the council of ministers for approval;
- Upon its approval by the council of ministers, it will be sent to the HPR;
- The Speaker of the house reads it out to the members of the house;
- **Members deliberate, discuss on it and may send it for further inquiry to a sub-committee;**
- The sub-committee reports back to the house its findings and recommendations;

Cont'd

- **Based on the recommendation, the house may approve, send for amendment, or reject the draft law.**
- If approved, the speaker will send it to the president for signature.
- The president has **15 days to sign**. If failed, the law will be promulgated without his signature.
- The law must be published in a Negarit Gazette.
- In other words, **the president has no veto power.**

Chapter Six: Hierarchy of Laws

- Hierarchy of laws refers to the superior - subordinate relationship that exists among the various types of legislation.
- It reflects the power of their makers.
- **It is important for discrimination of laws** (in order to identify which comes first and which one comes next).
- Knowing hierarchy of laws of a country is important for the **purpose of interpretation of laws**.

Hierarchy of laws under 1995 FDRE constitution

- Now federalism system of government is adopted
- State power is divided b/n federal and state gov.
- Both governments have a power to make laws.

1. Supremacy of constitution

Source of both the federal and regional government.

Why supreme?

- ❖ Emanation from the will of the people.
- ❖ Art 9(1)...as supreme

- The people are the supreme power holders and the Constitution is the expression of their will.
- **The constitution vs. International treaties?**
 - Art 9(1), 9(4), 55(1)?
 - Art 13(2)?=inconformity refers to they are superior to constitution.

International treaties vs. other domestic laws

- ✓ The **HPR** is empowered to ratify IT and proclamations. Which one is superior when conflict arises b/n the two?
- ✓ **When laws are passed by the same organ such laws are equal.**

Q. What about the position of International Treaties with regional laws?

- Art 51(8)=power of federal government.
- If that is the case under federal state structure both the federal and state laws are parallel (no superior inferior relationship between the two)
- So, we can't establish hierarchy between International Treaties and state laws.

Federal legislations and their hierarchy

- The **proclamation comes next** to the constitution because **it is enacted by the HPR**, which is the direct representative of the people and the HPR is a supreme organ.
- Emergency decrees are issued by the Council of Ministers to tackle certain extraordinary happenings in the country **(77.10 and 93)**.

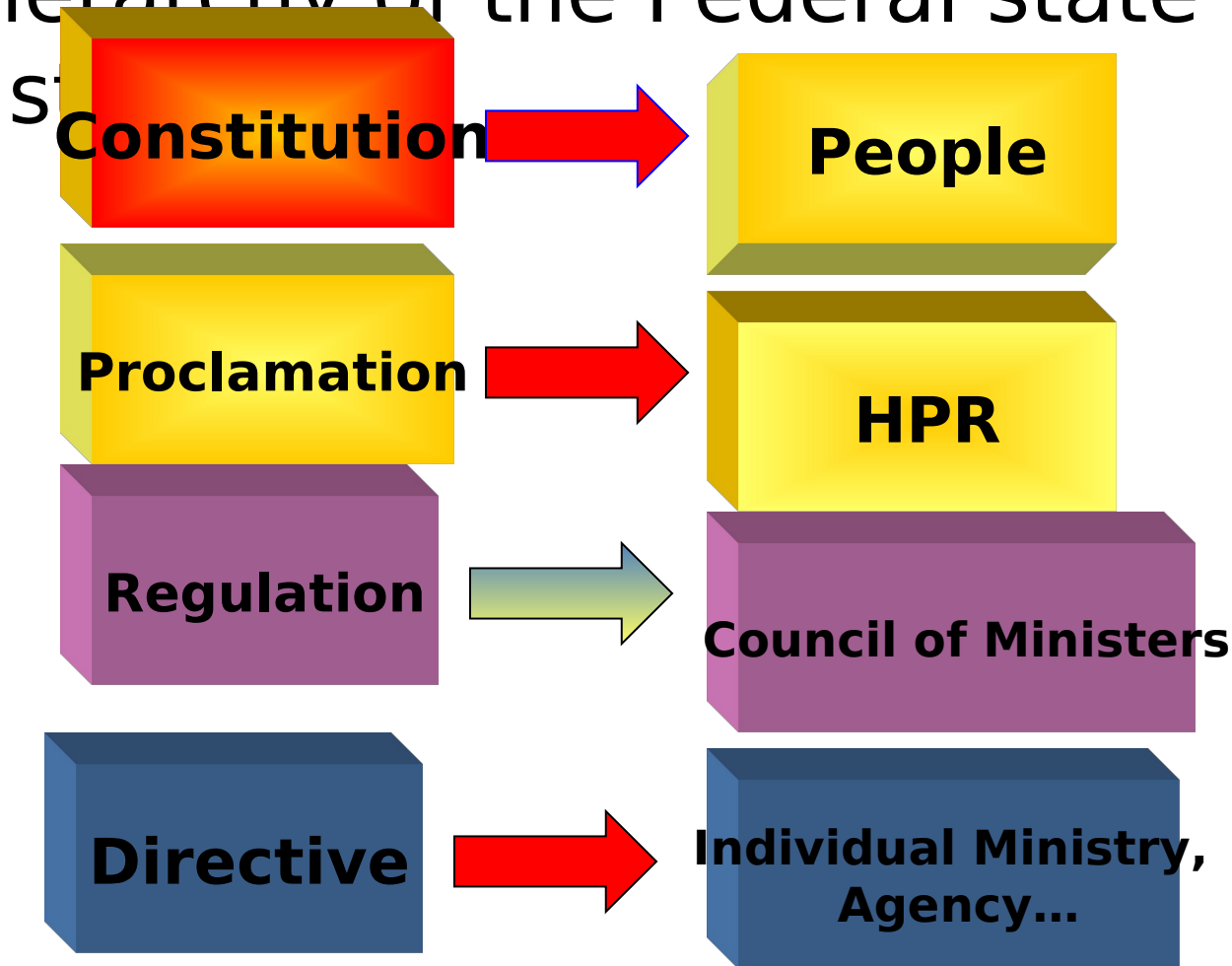
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- Regulations are to be enacted by the Council of Ministers.
- Whereas, directives are adopted by each individual ministry.

Thus, FDRE Constitution, Proc, emergency decree, regulations, directive.....

Cont'd

Hierarchy of the Federal state



Federal vs. State Laws

- The laws that are enacted by the federal and state government organs are similar in form;
- Since, the federal and state governments are **empowered with their own spheres, their laws are independent.**
- Some powers are **clearly** given to the federal government and **residual** powers are assigned to states.
- And they can enact laws on the areas they are empowered to exercise power.

- If that is the case under federal state structure both the federal and state laws are parallel (no superior inferior relationships between the two)
- So, we can't establish hierarchy b/n federal and state laws.

Cont'd

- E.g. Foreign affairs, defense, land and natural resources, trans-boundary rivers,(see Art.51, 55 & 96)
- **Regional states also have the power to make law (art 52)** on issues which are not given for the Federal Government or not given as a concurrent power(Art.52(1)).
- They also may be delegated to enact laws.
- Concurrent powers, Art 98.

Unit 7: Interpretation of Laws

- **Interpretation** refers to the act or process of determining the sense, real meaning of obscure or ambiguous terms of laws.
 - **Why do we need to interpret laws?**
- ## 1.1. The nature of Law:
- Laws are formulated in **general terms**. The law maker can't offer to go into details of everything while making laws.

Cont'd

- 1.2. **The problem of Language** (ambiguous and vague words) e.g. Who is a family member? What is a family?
- 1.3. **Social dynamism and the static nature of law**
 - Society changes very fast, but the law doesn't; it usually **lags behind**.
- 1.4. **The Possibility of Making error:** While the legislator enacted laws, they may contain various errors.

2. Who interprets laws?

2.1 **Judicial (by courts, most common)**

2.2 **Doctrinal** (legal scholars and writers).
But usually non authoritative (persuading courts, legislators and future decisions).

2.3 **Legislative** (historically, but currently, not applicable).

❖ Recently, constitutional interpreting organs (HoF in Ethiopia, Constitutional council in Italy and France, Constitutional court in Germany)

Cont'd

3. How Should One Interpret the Law?

3.1. Where the Law is Clear,

- No need of interpretation when the law is clear.
- There is an exception to this rule when the rule entails for absurd consequences and that is not the intention of legislature.

3.2. Where the law is Ambiguous:

- **Word meaning** (give the word its ordinary meaning).
- **Legislative intent** (look into legislative minutes)

3.3 Where the Law is Silent:

Argument a Pari or Argument for Similar reason (Analogy)

- This happens where the law lists some matters while leaving the statement illustrative, that puts a room to add other lists (then we can include similar lists with what is listed).
- E.g. Agricultural products such as maize, *chat* and wheat **shall be exempted from tax**. What about Teff?

Argument a fortiori (for stronger reason)

- E.g. A person who has **one Ethiopian parent** will get Ethiopian citizenship. What about if both of his parents are Ethiopians? (see art 6 of the constitution)

Argument a Contrario (Contrary Reason)

- Eg. Heavy trucks may not enter into the city from 6 Am up to 6 PM. What about from 6 PM up to 6AM?

3.4 Where the Law is Contradictory:

1. The law that is **higher in the hierarchy** **prevails over the law that is lower**

(hierarchy of laws)

2. Posterior law prevails over prior law

(time of promulgation)

Lex posterior derogate lex priori (the latter law prevails over prior law)

3. The special law prevails over the general (General contract law Vs Law of Sales)

Cont'd

- These rule(3) are applicable when.
 - provisions of a single legislation contradict with each other; or
 - where the contradiction is between laws of the same hierarchical position that are issued at the same time. (civil code.. contract law, sales, agency)

Cont'd

- In such cases the law which is more specific or special prevails over that which is general.
- Because the specific is more explicit and tells us clearly the intention of the legislature.

Cont'd

3.5. Where there is discrepancy between the provisions of the law written in different languages-

e.g. Amharic prevails over English as the former is the working language of the federal government.

3.6. Where there is discrepancy in amounts written in words and figure- word prevails

- E.g Five thousand,.....500

Unit 8: Amendment and Repeal of laws

- **Amendment** of law refers to the system of adapting the existing law to the new circumstances and situations of the nation. i.e. since the society is changing, laws must also change in order to couple up with the existing scenario.
- The amendment of existing laws is normally made by the state organ that issued them.

Cont'd

- **Repeal** of law-refers to the total or partial abrogation of a given legislation.
- It refers to the unmaking of the law that has been once enacted.
- There are different **forms/ types** of repeal.
- Express/explicit/, tacit/implicit/, expiry of laws, and repeal by disuse

Cont'd

1. Express/Explicit Repeal/

- When a new law expressly and explicitly withdraws the obligatory force of the old law.
- To say that an existing legislation is expressly repealed by a newly enacted legislation (the repealing law), it must state specifically that the previous legislation is no more operative in the future.
- It must indicate which legislation (proc No.---)and which of its provisions(Art xx) are repealed.

Cont'd

- Express repeal itself takes two ***forms-general or partial.***
- An express repeal is said to be general repeal when the repeal concerns the entire body of a given legislation.
- That is in case of *general express repeal* the repealing legislation abrogates the whole body of an old law stating it expressly and specifically.

Cont'd

- An express repeal is said to be partial when the repeal affects **only part of an old legislation.**
- In other words, repeal is partial when the new repealing legislation limits only the scope of application of an earlier legislation without abrogating it totally.

Cont'd

- This is an example of partial express repeal.
- It does not hinder the applicability of the proclamation or regulation as a whole. The repeal indicated in the new proclamation affects only those provisions of the old legislation that are expressly mentioned in the repealing proclamation.

Cont'd

2. Tacit (Implied) Repeal

- Implied repeal refers to the case where the repeal of the old legislation is *not expressly provided* but inferred from the incompatibility between the provisions of a new legislation and an old one.

The existence of tacit repeal is known by way of interpretation.

Cont'd

- The law making organ may sometimes issue a law that is inconsistent with an existing legislation without expressly providing the repeal of the earlier legislation.

Cont'd

3. Expiry of Laws:

- ❑ In most cases laws are issued to serve for an indefinite period of time for the future *and such type of law come to an end either by express or tacitly repeal or when they are replaced by a new legislation.*
- ❑ There are, however, some instances where laws are issued to serve only for a definite period of time after the expiry of which they will cease to have a force of law.

Cont'd

- Such types of laws for instance, include, emergency decrees, annual budget proclamations, laws establishing an ad-hoc committee or body.

Cont'd

4. Repeal by Disuse:

- Although legislations issued for an indefinite period of time and come to an end through either express or tacit repeal, there are cases where such types of law fall into disuse and thereby rendered inapplicable even if there is no express or implied repeal.
- Laws fall into disuse when they, through years, become incompatible with the prevailing social, economic and political realities and conceptions of the society.

Effects of Repeal of laws

Generally, effects of repeal are:

- ❖ It renders the repealed law **inapplicable** for the future.
- ❖ It will neither create nor destroy **rights and duties** thereafter.

Specifically, effects of repeal are:

Cont'd

1. The non-revival of repealed laws:

Think of the following hypothetical situation. Legislation 'A' is repealed by another subsequent legislation 'B'. Suppose that legislation 'B', is again repealed by legislation 'C' which comes after legislation 'B', do you think that this will revive legislation 'A'?

2. Non- retroactivity of repealing Law

3. Subsidiary legislations in case of repeal of the parent legislation. In principle, it follows parent legislation, unless the legislature saves it.

Who repeal laws?

- A. Laws may be repealed by the organs that make them
- B. The organ that interprets the constitution
- C. Courts

Unit 10: JURIDICAL ACTS

What is it?

- Those acts which are performed solely in order to bring about one or several legal effects.

Prerequisites for the validity of juridical acts

- a. legal capacity
- b. Consent
- c. Consent free from vice
- d. Form
- e. Lawful content/object/

What kinds of acts can be considered as juridical acts?

- Marriage
- Will
- Contract

Effects of juridical acts

- Art 1731.....binding b/n the parties and considered as laws.