Introduction to law

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CLASSIFICATION OF LAWS

- **Why classification**??
- Maintain minimum of repetition, over lapping and potential conflict
- To administer effectively
- For academic purpose (can effectively be taught)
- To accommodate new situations

CLASSIFICATION OF LAWS

- **PUBLIC AND PRIVATE LAW**
- **Public law:** regulates the acts of persons in respect of the general interest,
- direct or mediate delegation emanating from the sovereign
- not the whole of the law that is applicable to the state in its relations with its subjects
- **Constitutional law**: organization of the state, its fundamental rules, mode of government, and the attributions of its political organs, their limits and their relations

CLASSIFICATION OF LAWS

- deals with the ultimate questions of the distribution of legal power and of the functions of the organs of the State
- **Administrative law** regulates the operation of the executive power in all its degrees
- **Criminal law**, the infliction of punishment directly by the organs of the state

CLASSIFICATION OF LAWS

- **Criminal law**, the infliction of punishment directly by the organs of the state
- **Civil procedure**: regulate the activities of courts,
- but civil procedure: the enforcement of private rights that it is more convenient to regard it as belonging to both public and private law

CLASSIFICATION OF LAWS

- **B. International and National Law**
- International law – The law of nations
- regulate relations between State *inter se (Bentham*
- (Oppenheim) the body of customary and conventional rules considered legally binding by civilized States in their intercourse with each other
- Salmond: international agreements (express or implied)

CLASSIFICATION OF LAWS

- John Austin, Willouthby and Holland: is positive morality and is not a law properly so-called
- solely dependent on the voluntary acceptance of the States
- not set or enforced by a political sovereign authority, lacks any arbiter of disputed questions
- Dias: States pay less to International Law than what individuals pay to municipal law,
- but still “law” to inspire a sense of obligation among States to follow it. it is a weak law

CLASSIFICATION OF LAWS

- International Court of justice: (Hague) does not have any universal compulsory jurisdiction to settle legal disputes between States.
- not yet been codified, suffers from uncertainty
- Public international law regulates the relation between states
- Private international law: governs the relations between individuals of different nationals (conflict of laws)

CLASSIFICATION OF LAWS

- B) National law: law of a nation or law of the land
- Local Law: of a particular locality and not the general law of the whole country
- local customary law and local enacted law

CLASSIFICATION OF LAWS

Substantive

- defines a right
- concerned with the administration of justice seeks to achieve

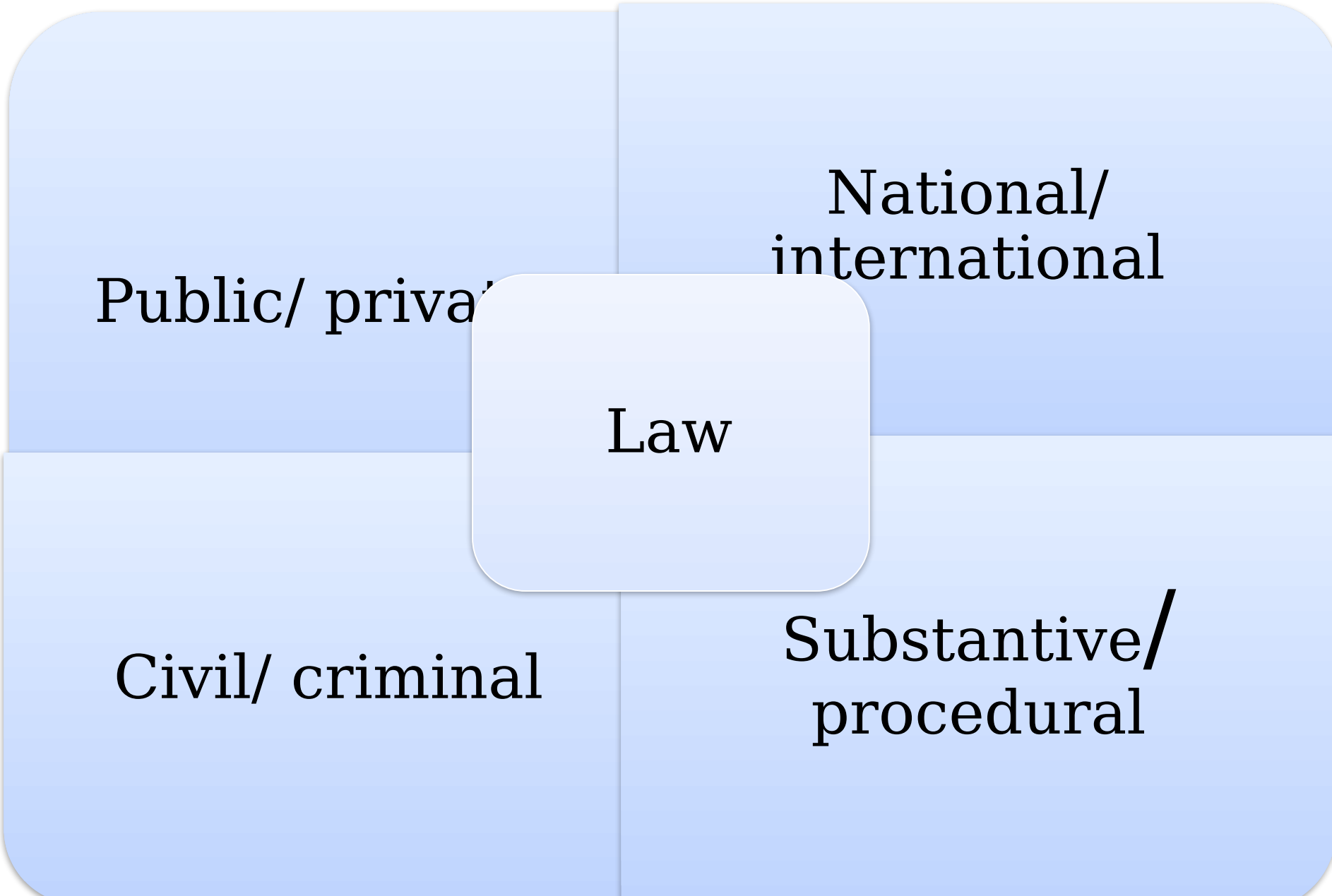
Procedural Law

- manner of asserting and defending rights before courts
- determined the remedies
- ‘law in action’ as it governs the process of litigation
- the means by which those ends can be achieved

CLASSIFICATION OF LAWS

- **Civil and Criminal Law**
- **Civil law:** deals with the definition and enforcement of all private or public rights
- is essentially territorial in nature
- Roman word *jus civile*
- Austin and Holland: as ‘positive law’ because it is enforced by the sovereign political authority
- Criminal law: part of public law and state alone, representing the nation, has the right to punish.

CLASSIFICATION OF LAWS



THE MAKING AND REPEAL OF LAWS

- Law making is the process of establishing a new rule of law on a particular subject
- **Who may initiate legislation**
- it is understood in fact and in law that law
- making right is always shared with the executive
- Government: better acquainted than anyone else with the needs of the society
- In most countries: the government has the right to introduce draft laws (members of Parliament or not.

THE MAKING AND REPEAL OF LAWS

- Parties involved in administrative activities have practical knowledge on the problems of existing laws or the activities that need rules to and can propose a draft
- strict separation of power: only members of the legislative assembles/president
- **step after a bill is initiated**
- Inform members of Parliament: posting of notices, announce in the chamber, entry in the minutes of the proceedings report of debates, and formal first readings

THE MAKING AND REPEAL OF LAWS

- United Arab Republic: submitted to the committee whose duty is to prepare proposals and decide goes forward.
- France: examined by talented individual members in to ensure that they have no financial implications.
- Great Britain: Officials of the government will check to ensure that no contradiction is there to the standing orders of the House
- Yugoslavia: before any debate /Assembly's legislative and judicial committee, to check that it conforms to the situation and the existing law and that it is correct.

THE MAKING AND REPEAL OF LAWS

- two essential phases: First, entrusted to committees/ad hoc or standing committee. Secondly, debate and decision/matter for the House
- Italy: entrust to committees examination of bills and their final enactment/Chamber has the power to recall a bill from a committee (automatic return)
- In many countries: Parliament decide to debate a bill in the House without referring it to a committee (bills that are urgently needed)
- Role of committees US Congress: can amend or transform as they wish any bill, entirely independent of the House and Senate, the future of a bill depends on their will

THE MAKING AND REPEAL OF LAWS

- the chairperson of the committee plays the key part.
- persons and bodies outside Parliament: are consulted at some stage/ be drafted with full knowledge
- Extra-parliamentary consultants: derives from the
- principle of popular sovereignty
- **Promulgation**: the last stage in law making
- authenticates a bill as a law and gives it binding force; it also entails publication

THE MAKING AND REPEAL OF LAWS

- **Ethiopian:**
- **HAILE SELASSIE'S ERA**
- FORMS OF LAW: Orders, Proclamations, Decrees and Legal Notices
- Primary Legislation: Orders, Proclamations and Decrees
- Order": prerogative of the Emperor
- Proclamation: Substantive legislation passed by Parliament and approved by the Emperor
- Decree: Emperor alone promulgate legislation in cases of emergency that arise when the Chambers are not sitting

THE MAKING AND REPEAL OF LAWS

- Legal Notice: publication of Rules and Regulations, and Municipal Law/subordinate legislation
- General Notice: used to announce Government appointments and awards of honour by the Emperor
- Notice: announcement of certain matters of public interest
- PUBLICATION OF LAW:
- Negarit Gazata is the official legislative, executive and administrative Law Reporter of Ethiopia

THE MAKING AND REPEAL OF LAWS

- first issue appeared on March 30, 1942
- if there is any language conflict, Amharic was the only official language
- **Law Making under the Repealed (Revised) 1955 Constitution**
- Two types of laws: primary legislations(result of the legislative activities of the supreme organs of state power of the Empire,
- subordinate legislations: enacted by organs of authority through delegation

THE MAKING AND REPEAL OF LAWS

- The sources of primary legislations: Emperor (Orders and Decrees) and Parliament (Proclamations. Orders)
- Initiation of orders: unilaterally by the Emperor
- By specific governmental body (submit to Council of Ministers and if approved, passed on to the Emperor in the hands of the Prime Minister for enactment or shelving as the case may be
- Initiation of Proclamations: initiated from either of the two Chambers (majority approval in the Chamber)
- Then submitted to the Emperor as the supreme sovereign

THE MAKING AND REPEAL OF LAWS

- Initiation by interested governmental body: submitted to the council of Ministers, then to the Emperor in the hands of the Prime Minister
- Emperor agrees: sends it to any of the two Chambers of the Parliament (to debate and finally a vote)
- meets with majority approval of the Chambers: forwarded to the Emperor for final approval and promulgation.
- Decrees: legal prerogative of the Emperor, enacted only during the temporary absence of the Parliament

THE MAKING AND REPEAL OF LAWS

- subject to a vote of approval when the parliament subsequently reconvened
- **THE DERG'S ERA**
- only one type of primary legislation: proclamation (enacted by its congress of the PMAC)
- the power to issue proclamations was granted to the congress by another proclamation
- Initiation: firstly the congress of the PMAC itself had this right
- Secondly, governmental organs by their submission of the draft to the Council of Ministers

THE MAKING AND REPEAL OF LAWS

- draft meets the approval of the Council of Ministers, it was submitted to the PMAC's Congress for deliberation, voting and enactment
- Subordinate legislations: Legal Notice(drafted and issued at the level of the governmental body authorized to issue them
- used to be enacted among with the proclamation
- **UNDER THE PDRE**
- primary legislation /five: enacted by the National Shengo (supreme organ of state power)
- Decrees: by Council of State (to facilitate the implementation of the powers and duties entrusted to it by the Constitution

THE MAKING AND REPEAL OF LAWS

- special Decrees: by Council of State/when necessary and compelling circumstances arise.
- president of the Council of State: presidential Decrees, (facilitating the implementation of the powers and duties entrusted upon him/her by the Constitution
- special Presidential decrees: compelling circumstance/when the National Shengo was not in session

THE MAKING AND REPEAL OF LAWS

- initiation of proclamations: Article 71
- Council of State,
- the President of the Republic,
- Commissions of the National Shengo,
- members of the National Shengo,
- the Council of Ministers,
- the Supreme Court,
- the Procurator General,
- Shengos of higher administrative and autonomous regions, and
- mass organizations through their national organs

THE MAKING AND REPEAL OF LAWS

- subordinate legislations: Directives and Regulations
- **Law making in the present day of Ethiopia**
- the House of Peoples' Representatives has the power to enact laws in the form of proclamation
- Art. 55 of the FDRE Const:
- Natural resources of the Federal State;
- Inter-region and foreign trade law;
- Federal transportation laws;
- Electoral laws and other laws with regard to the enforcement of political rights;
- Nationality and other laws;
- Standard and calendar;
- Patent and copyright laws.

THE MAKING AND REPEAL OF LAWS

- laws in the form of codes on [Art. 55(3), (4) and (5), (6) of FDRE Constitution].
- Labour Code;
- Commercial Code;
- Criminal Code;
- Civil laws necessary to establish and sustain one economic community
- Article 62(8): the House of Federation has the power to determine civil matters on which the House of Peoples' Representatives makes laws

THE MAKING AND REPEAL OF LAWS

- executive organs have also given the power to enact regulations and directives
- Article 77(3) the Council of Ministers shall enact regulations pursuant to powers vested in it by HPR
- Article 74(5): the Prime Minister: power to supervise the implementation of regulations and directives adopted by the Council of Ministers.
- Art. 74(5) Council of Ministers the power to enact directives
- Ministries: given the power to enact directives to implement the powers given under proclamations

THE MAKING AND REPEAL OF LAWS

- Initiation: Council of Ministers shall submit draft laws to the House of Peoples' Representatives on any matter falling within its competence, including draft laws on a declaration of war" [Art. 77(11)
- each ministry has the power to initiate policies and laws
- Art. 4 of Proc. No 470/2005,
- the House of Federation; the Speaker;
- Federal Supreme Court;
- members of the House;
- Committees of the House;
- other governmental institutions directly accountable to the House have the power to initiate and submit draft bills to the House on matters within their jurisdictions.

THE MAKING AND REPEAL OF LAWS

- Any draft must be made in writing and be submitted to the Speaker to its presentation to the House
- Speaker must present the summary of the draft law and deliberation on the content in general must be held
- Speaker will refer it to the concerned standing committee

THE MAKING AND REPEAL OF LAWS

- Standing Committees [Proc. No. 470/2005; Art. 18]:
- 1) the Capacity Building Affairs;
- 2) the Trade and Industry Affairs;
- 3) the Rural Development Affairs;
- 4) the Natural Resources and Environmental protection Affairs;
- 5) the Infrastructure Development Affairs;
- 6) the Budget and Finance Affairs;
- 7) the Legal and Administrative Affairs;
- 8) the Foreign, Defence and Security Affairs;
- 9) the Women's Affairs;
- 10) the Information and Cultural Affairs;
- 11) the Social Affairs; and
- 12) the Pastoralists Affairs.

THE MAKING AND REPEAL OF LAWS

- The committee : present its proposal after 20working days to the House
- second reading will be held in the House
- deliberation can not be exhausted, the bill shall be referred for further scrutiny to the pertinent committee
- shall read out the amended version and its final decision to the House.
- House shall pass the bill (draft law) after discussion on the final proposal
- Speaker shall send the draft to the president for signature
- President is required to sign the bill within 15 days other wise the bill will be effective after 15
- ratified law must be numbered by the Speaker and thereby published in the Federal Negarit Gazeta

THE MAKING AND REPEAL OF LAWS

- **REPEAL OF LAWS**
- abrogation of an existing law by legislative act/ making the law no longer have a legal effect
- A law (statute) is either perpetual or temporary
- Who May repeal Laws?
- the power of a legislative body to repeal a law is co-extensive with its power to enact such a law/What parliament has done parliament can undo
- Repeal: express or be implied (inconsistency, or irreconcilability of the provisions of an earlier statue, with those of a later statute

THE MAKING AND REPEAL OF LAWS

- **EXPRESS REPEAL**
- 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
- affects the so-called “extent clause” of the former law and leaves the rest of its provisions intact.
- the words “is or are hereby repealed
- “shall cease to have effect”
- shall be omitted

THE MAKING AND REPEAL OF LAWS

- 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 reenacted provision be later declared invalid, it may not have the effect of reviving the old provision
- **IMPLIED OR TACIT REPEAL**
- legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter
- inconsistent or repugnant to the provisions of the earlier law

THE MAKING AND REPEAL OF LAWS

- **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
- he particular law is construed as an exception or qualification of the general law
- there is no rule that prevents to repeal a partial prior law by the subsequent general law.
- **C) Prior General Law and Later Particular Law**
- the latter particular law may have the effect to amend or repeal the prior general law on the same subject matter

THE MAKING AND REPEAL OF LAWS

- **D) Laws defining offences and penalties**
- 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?**
- The principle is that the new law prevails over the old law.
- **EFFECTS OF REPEAL**
- If a law is repealed it is considered as if it had never been enacted
- not revival of the first law unless the third law makes an express provision to that effect.

THE MAKING AND REPEAL OF LAWS

- permit continuance of institution of any legal proceeding
- 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.
- **EXPIRY OF LAWS**
- 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

THE MAKING AND REPEAL OF LAWS

- **CONSEQUENCES OF EXPIRY**
- A) Legal proceedings under expired statute
- proceedings taken against a person under a temporary statue IPSO FACTO terminates as soon as the statute expires
- a saving provision
- B) Notifications, Orders, rules, etc. made under temporary statute
- C) Expiry does not make the statute dead for all purposes
- person who is prosecuted and sentenced during the temporary act for violating its provisions cannot be released before the person serves his/her sentence

THE MAKING AND REPEAL OF LAWS

- **REPEAL BY A TEMPORARY STATUTE**
- Weather the repealed statue revives on the expiry of the repealing statue
- depend upon the construction of the repealing statute
- **Does disuse make Law Non-obligatory?**
- law subsists indefinitely as long as it is not repealed
- the disuse of a law can not make it
- repealed because it is the legislative body that must repeal the law, not the subordinates.

THE MAKING AND REPEAL OF LAWS

- **NULLIFICATION OF LAWS**
- “the act of making something void; specifically the action of a state in abrogating a federal law, on the basis of state sovereignty
- Jury nullification, 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”.
- jury nullification and rule of law?
- A law is nullified if it is unjust. It is said that “an unjust law is no law at all.”
- the rule of law basically means to be “ruled by laws, not by men”

HIERARCHY OF LAWS

- Hierarchy: “ascending series ranks or degrees of power and authority with the correlative subjection, each to the one next above
- laws derive their validity from the authority that respective makers posses.
- **Hierarchy of laws under the revised constitution of 1955**
- Art. 122: primary and subordinate legislations were inferior to the Constitution
- Arts 122 and 64: every one in the empire has the duty to respect and obey the Constitution, laws, decrees, Orders and regulations of the Empire.
- international treaties and the Constitution?

HIERARCHY OF LAWS

- Primary legislation: made by the legislative body,(the House or Houses of parliament) Chamber of deputies and senate of Ethiopia.
- primary legislation: proclamations, decrees, and Orders
- Subsidiary legislation: orders(made by each ministry) regulations; legal notice; general notice; and notice of approval.

HIERARCHY OF LAWS

- **Hierarchy of laws under the pdre constitution of 1987**
- Art. 118 of the PDRE Constitution declared that it was superior to all other laws.
- National Shengo: power to enact laws on matters of national interest.
- PDRE Constitution did not grant international treaties the status of supreme law
- Council of State would, “ratify and denounce international treaties.”
- on equal footing with the decrees proclaimed by the Council of State