**HANDOUT SEVEN**

**UNIT SEVEN: INTERPRETATION OF LAWS**

**7.1) GENERAL**

**All laws must be sufficiently clear and reasonably formulated to address their purposes. Laws should be clear not only to the lawyer but also to the layperson. However, this may not be achieved all the time.** There may be certain situations that give raise the need to give meaning to a law.

**What do we mean by interpretation?**

**Interpretation is a process of giving meaning to the phraseology of the law.** It is **reducing the law into reality.** “Interpretation is the art or process of discovering and expounding the intended signification of the language used, that is, the meaning which the authors of the law designed to convey to others”[Garner; 2004: 837]. Interpretation of a law comprises of search for the soul of the law. The word interpretation can have a narrow meaning, i.e. finding the literal meaning of the words used and a wide meaning, i.e. **ascertaining the intention of the law maker** [M. A., Sujan; 2000: 181]

**What is the distinction between interpretation and construction?**

Although these two terms appear to connote the same meaning, but in fact it is not so. **Interpretation differs from construction in that the former is the art of finding out the true sense of any form of words, that is the sense in which their author intended to convey and enabling others to derive from them the same idea, which the author intended to convey**.

**Construction, on the other hand, is the drawing of conclusion, respecting subjects that lie beyond the direct expressions of the text from elements known from and given in the text, conclusions which are in the spirit though not within the latter of the text.**

**Interpretation only takes place if the text conveys some meaning or the other.** But **construction is resorted to when, in comparing two different writings of the same individual or two different enactments by the same legislative body, there found contradiction** where there was evidently no intention of such contradiction or where it happens that part of a written or declaration contradicts the rest.

**Why we need to interpret the law?**

[Taken from Mohammed; 1999: 2]. Words are the only means for all legal instruments through which the intention of the lawmakers can be expressed. **Because of the inherent nature of language, words are susceptible to ambiguity and vagueness.** Such defect gives rise to bread and butter of lawyer thereby making the task of interpretation to be considered as an indispensable and inseparable attribution of the field of law. In this connection, Cooley’s in Farani[1970: 584] writes;

The deficiencies of human language are such that, if persons skilled in the use of words prepared written instruments carefully, we shall still expect to find their meaning often drawn in question or at least to meet with difficulties in their practical application. But when [draftspersons] are careless or incompetent, these difficulties are greatly increased and they multiply repeatedly when the instruments are to be applied not only to the subjects directly within the contemplation of those who framed them but also to a great variety of new circumstance which could not have been anticipated but which must nevertheless be governed by the general rules which the instruments establish. Moreover, [there could be] different points of view from which different individuals regard these instruments themselves. All these circumstances tend to give to the subject of interpretation and construction great prominence in the practical administration of law.

In addition to the ambiguity created by the doubtful meaning of words, there are other instances where the words used, due to their inherent nature, do not express the legislative intent perfectly and thereby necessitate interpretation. Such is the case where the words used exceeds or fall short of expressing the meaning intended. As a result, most of the time over-vagueness and over-precision are considered as twin danger that must be avoided by interpreter. This can be achieved by looking the general policy consideration of certain legal instrument thereby the interpreter tries to ascertain the true and exact intent of the lawmakers.

Further, **the breadth and scope of human knowledge are very much limited, thus, the lawmakers cannot enact a law that will regulate every microscopically detail of human relation.** **In order to remedy such deficiencies, the legislature usually uses general words deliberately so as to enable certain legal instrument to accommodate new circumstances** that have not been contemplated by the legislature at the time of law making. **The vagueness created by the legislature leads to more room for interpretation** there by enabling the court to handle new circumstances within the purview of the general policy consideration of the statutes.

In sum, **we need to interpret law where the language is not clear, vague and to find the true meaning of the law to apply to certain situation**.

**7.2) TYPES OF INTERPRETATION**

Interpretation may be of different kinds. For example, **we have grammatical and logical interpretations.** **Grammatical interpretation implies that the meaning of the law is to be sought in the actual words used in it, which are to be understood in their ordinary and natural meaning.** In other words, where there is no ambiguity in the language employed by the statute any other interpretation except grammatical interpretation is permissible. This is known as litera scripta [Paranjape; 2001: 214].

**Logical interpretation, on the other hand, is that which departs from the letter of the law and seeks elsewhere or some other or more satisfactory evidence of the intention of the legislature**. This is known as “sententia legis”. Interpretation may also be classified as doctrinal, judicial, or legislative interpretation depending on who interprets the law[Paranjape; 2001: 214].

**6.2.1) TYPES OF INTERPRETATION IN GENERAL**

**Who interprets the law: the scholars, the court (judges), or the legislature? In answering this question, interpretation may be doctrinal, judicial or legislative**. We shall now discuss, in turn, the doctrinal, the judicial and the legislative interpretation.

**A) Doctrinal Interpretation**

**Doctrinal interpretation is that “which is made in books, in reviews, in the classroom”.** It is performed mostly **by the legal scholars when they lecture, prepare articles, and books.** Apart from that, the doctrinal interpretation propounded by scholars has “no other use than to influence court decisions”. This is best achieved through **commenting on laws and judicial opinions, grouping points of law involved in analogous cases, and stressing inconsistencies**, if any, that may crop up in the judges decision. Therefore, scholars interprate laws and would help judges to solve practical cases. **Ethiopian cases, being mostly unreported, cannot be, a system so discussed. In other jurisdictions, the influence of scholarly commentators is strong** when their opinions are unanimous (communis opinion doctorum) and thus constitutes “doctrinal custom”. In Ethiopia, there is no custom of such scholarly commentators and it is imperative to develop the culture. In so doing the Supreme Court case reports would help us [What is Law].

B) Judicial Interpretation

**When a case is lodged before the court, lawyers must argue why the law covers or does not cover the behaviour in question**. Then, the judges must “find the meaning” of the law to decide whether it regulates the particular conduct at issue. **This search for “meaning” is known as judicial interpretation** [Paranjape; 2001: 214].

 “**Judicial interpretation is that which emanates from a court when, in order to decide a case, it applies a law whose meaning is discussed before it**.” Administrative organs may interpret law to adjudicate cases. It is important to note that if the meaning is not disputed, no need of interpretation but a simple application of the law.

Where a law’s meaning is disputed before the court, the decision after interpreting the law may constitute what some call “settled” case law or judicial custom. Judicial interpretations thus become a source of law. “In the judgments alone is to be found the law in its living form.” This is hardly the case in Ethiopia, where most judicial opinions are not exhaustively researched and, being largely unreported, cannot be readily “found”. However, the Supreme Court is empowered to interpret laws on cases and the decision to be followed by lower courts.

C) Legislative Interpretation

**Legislative interpretation is that made by the lawmaker.** In ancint **France**, **the king** alone could interpret his ordinances. It followed, therefore, that when the meaning of one of them was doubtful judges should abstain from interpreting it, the action was suspended and the parties sent before the king in order to have the meaning of the law definitely established. At present, such appeals are no longer permitted, hence, **a judge may not refuse to pass judgment on the pretext that the law is silent, obscure or insufficient.** S/he would be guilty of a denial of justice. **Under present Ethiopian law, such refusal to pass judgment might be charged as a breach of official duty under Article 420 Criminal Code, unless the law provides otherwise.**

Now a day, we do not find the government (King, president) directly interprets the law. What is the fashion is that more frequently **a law contains, from the outset, a section defining the main terms used in it.** This technique, rather unfamiliar in continental Europe, is prevalent in common law countries and has been introduced in Ethiopia. (You can refer any proclamation, Art 2 that is the definitional provision).

**7.2.2) INTERPRETATION OF STATUTES (Common Law)**

What is a statute? **Statute is defined as a law passed by a legislative body** [Garner; 2004: 1448]. The term ‘act’ is interchangeably used as a synonym to statute.

Any positive enactment to which the state gives the force of law is a ‘statute’, whether it has gone through the usual stages of legislative proceedings, or has been adopted in other modes of expressing the will of the people or other sovereign power of the state [William M. Lie et al. Brief Making of Law Books in Garner; 2004: 1448].

In short, a statute is a written law enacted by the legislative body. In other words, the end product of the legislative process is a statute (also referred to as an act or legislation).

**Since a statute is a written law, the language may be unclear or ambiguous.**

When a statue is unclear with respect to a particular question, lawyers and courts generally begin their search for statutory meaning by asking the question: did the legislature intend this particular statutory provision to cover this particular fact pattern?

**In Common Law, there are two tools for statutory interpretation: Canons of Construction and legislative history [Note taken from Supreme Court Compilation].**

a. Canons of Construction

**Canons of construction are judicially crafted maxims for determining the meaning of statutes**....

**Canons expressly intend to limit judicial discretion by rooting interpretive decisions in a system of aged and shared principles from which a judge may draw a “correct, ‘unchallengeable rule of ‘how to read’.**

There are multitudes of canons. Some of those most frequently used by the courts are listed below with their commonly used Latin phrases in parentheses. **The following are canons of construction:**

* 1)  A thing may be within the letter of the statute and yet not within the statute, because not with in its spirit, nor within the intention of its makers.
* 2)  Statutes in derogation of the common law are to be read narrowly.
* 3)  Remedial statutes are to be read broadly.
* 4)  Criminal statues are to be read narrowly.
* 5)  Statutes should be read to avoid constitutional questions.
* 6)  Statutes that relate to the same subject matter (in pari materia) are to be construed together
* 7)  The general language of a statute is limited by specific phrases that have preceded the general language (ejusdem generis).
* 8)  Explicit exceptions are deemed exclusive (expressio unius est exclusio alterius).
* 9)  Repeals by implication are not favoured.
* 10)  Words and phrases that have received judicial construction before enactment are  to be understood according to that construction.
* 11)  A statute should be construed such that none of its terms are redundant.
* 12)  A statute should be read to avoid internal inconsistencies.
* 13)  Words are to be given their common meaning, unless they are technical terms or  words of art.
* 14)  Titles do not control meaning.

The use of canons of construction for the interpretation of statues has been held in scholarly ill repute for over a century. So consistently unfavourable has their use been viewed that two contemporary scholars of statutory interpretation have matter of – fact written that “almost everybody thinks that cannons are bunk.

**Cannons of construction are criticised: first, that cannons are not a coherent, shared body of law from which correct answers can be drawn, and second that, viewed, individually, many cannons are wrong.**

Another criticism of the canons... is that for every canon one might bring to bear on a point there is an equal and opposite canon, so that the outcome of the interpretive process depends on the choice between paired opposites-a choice the canons themselves do not illuminate. (You need a canon for choosing between competing canons, and there is not any.)” [Richard A. Posner; 1983: 806].

Canons, as individual rules, are considered equally flawed. Canons are considered presumptions about legislative intent. To see this clearly, reread the canons listed above, adding the word why to each. For example, why should remedial statutes is read broadly? The answer to this question must be that this is what the enacting legislature intended, unless there is constitutional authority for another answer.

**Canons, despite the criticisms, continue to provide judges (and consequently attorneys) with a necessary rationale for making interpretive choices.** This is particularly true on the state level, where legislative history is slim and often inaccessible. In this context, some canons make sense. For example, without legislative history to the contrary, the canon that “explicit exceptions are deemed exclusive” would seem to be useful.

**b. Legislative History**

**The formal steps of the legislative process are officially documented.** In congress of the United States of America, ideas for legislation are introduced as bills or as amendments to bills; committee hearings, debates, and mark-ups (committee meetings at which bills are read line by line for review and amendment) are transcribed; committee actions are set forth and explained in committee reports; legislative debate is transcribed; and votes are recorded. For all legislatures, the documentation of these steps is part of the process of building majorities and providing the public with access to the work of the legislature. **For the courts, this documentation is legislative history.** However, significant steps in the legislative process are not recorded in the USA. The discussion of a bill on political issues, for example, might reveal very probative evidence of legislative intent, if documented, but, for various political reasons, it is not documented.

**A legislative history of a statute might contain all or some of the following documents or documentation.**

**Introduction**: **the bill or bills through which the statute was introduced**; the transcript of **introductory remarks; memoranda that accompanies such introduction** (New York, for example, requires introductory memoranda); and the record of a bill’s assignment to committee should be consulted.

**Committee Proceedings:** **transcripts of committee hearings, debates, and mark-up sessions; amendments; committee votes; and, finally, committee reports**, which in Congress contain a statement of a bill’s purpose and scope, a statement of the reasons for which a bill should be enacted, a section by section analysis, a statement of changes the bill would make in existing law, committee amendments to the bill, votes taken in committee, a minority report setting forth reasons for opposition to the bill .

**Floor proceedings**: **transcripts of debates; floor amendments; and votes Conference committee proceedings: conference committee reports are significant**.

**Executive proceedings**: **signing or veto statements and memoranda submitted in favour or opposition to the bill are also essential to interpret a statute.**

Not every statute has as complete a legislative history as set forth above. Not every statute goes through every possible step of the legislative process. Not every state legislature transcribes committee debates or includes conference committees as part of the legislative process. In beginning a search for legislative history, two initial inquiries are important: First, what legislative steps has the statute been through, and second, which of these steps are documented?

**Judges use legislative history as a tool for statutory interpretation**. As Justice Breyer[1992: 848] has written, “Using legislative history to help interpret unclear statutory language seems natural. **Legislative history helps a court understand the context and purpose of a statute**”. **It seems natural because, if the judicial goal is to discover whether the legislature intended to cover the particular conduct under litigation, intended to cover the particular conduct under litigation, reference to relevant legislative history logically advances that goal.** The value of legislative history as a tool of statutory construction is not universally accepted.

The criticism of the use of legislative history for statutory construction is tow- pronged. First, it is argued that the use of it is inconsistent with the democratic theory encapsulate in the constitution. “Committee reports, for speeches, and even colloquies between “Congressmen.... are frail substitutes for bicameral vote upon the text of a law and its presentment to the President.” In this same vein, it is said that if the goal is to find the intent of the legislature,” [1]egislative materials... at best can shed light only on the ‘intent’ of that small portion of Congress in which such records originate; [the legislative materials] there fore lack the holistic ‘intent’ found in the statue itself” [Kenneth W. Starr; 1987: 375].

Second, serious questions have been raised about the reliability of legislative history. The sharpest example of this criticism comes from Justice Scalia[1989: 98-9] it is said that the **information gathered from the documents about the legislative history is not reliable.**

It is important to note that legislative history is only useful as general guideline for statutory interpretation. Knowing, for example, that the committee reports are an extremely important part of congressional practice alerts one to the importance of committee reports but does not answer the question of whether a particular committee report is important to determine legislative intent with respect to a particular provision of a statute, every statute has its own legislative history that must be explored in the search for the meaning of the particular statutory language. Today, legislative history as cannon of construction gains acceptance. The court requires giving proper weight to the materials indicating the legislative history rather than automatically excluding such materials from consideration as an aid to interpret a statute [Avtar; 2006: 87].

**Despite criticisms, canons of construction and legislative history are important tools of interpretation**. In the United States of America it is fundamental that in construing the words of a statute “[t]he legislative intent is the great and controlling principle.” Indeed, “the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down.” What is important is that where a problem as to the meaning of a given term arises, a court’s role is not to delve into the minds of legislators, but rather to effectuate the statute by carrying out the purpose of the statute as it is embodied in the words chosen by the legislature.

**7.3) CONSTITUTIONAL INTERPRETATION**

[Taken from MOHAMMED BENTI SIRAG, Senior paper, Addis Ababa University, Faculty of Law, 1997]

**Constitutional interpretation envisages a situation where somebody tries to “effectuate the intent of those individuals who drafted the constitution and the electorate which ratified it.”** Constitutional language is always the product of group effort and compromise and may be deliberately chosen to be bridge over difference of opinion. Therefore, the intentions involved, here, are the intentions of many individuals who participated to a greater or less degree at various stages in the process of constitutional draftspersonship and subsequent ratification.

The afore-mentioned intention hides a host of complication:

**For one thing, an intention is a mental state. But the constitution was written and ratified by many people, not just one, and it is hard to see how group can literally have minds, mental states, or intentions..**.[for another] several groups are involved in constitutional making and they disagree deeply both among and within themselves... so, whose intentions are relevant? **Many intent theorists claim that provision of the constitution should be interpreted according to the intention of the people who wrote them, namely, the framers.** **However, [others argue that] it was the ratifiers who turned the words of the framers into a part of the constitution, and it is the ratifiers, not the framers, who represent the majority.** Consequently, the concerns with democracy and with the creators of the constitution, which provide the main rationales for original intent theories, should lead original intent theorists to emphasize the intentions of the ratifiers.

**Ato Mohammed agrees to the latter position because it is only upon approval by the ratifiers that the words of the framers have binding nature.**

On top of the factors for interpretation of statutes, constitutional interpretation has its own peculiar character. Such peculiarity has to do with the very nature of constitution and the purpose for which the latter is enacted.

**The judge is required to interpret the constitution by putting into consideration of its special nature.** This makes constitutional interpretation different from other forms of interpretation. This fact is clearly demonstrated by Brandies Stone [in Mohammed; 1999: 6-7] in such manner:

**Constitution is primarily a charter of government... Hence its provisions were to be read not with the narrow literalism of municipal code or a penal statute, but so its high purpose should illumine every sentence and phrase of the document and be given effect as of a part of harmonious frame work of government** (Emphasis added)

**In sum, constitution must be interpreted taking into account its nature.**

With regard to the United States of American Constitution, H. Jefferson Powell, concludes:

It is commonly assumed that the “interpretive intention” of the Constitution would be construed in accordance with what future interpreters could gather of the framers’ own purposes, expectations, and intentions [Wellington; 2005: 50].

How we interpret the constitution? We have to start by searching for authoritative sources of law and should do so [Wellington; 2005: 48]. **The text of the constitution is authoritative. It is also vague, sometimes ambiguous, which needs elaboration. The search for authoritative sources of law is therefore the search for interpretative tools** [Wellington; 2005: 48].

The question is who should interpret the Constitution?

In general, **some jurisdictions give the power to interpret the constitution to courts or other political bodies.** The political, philosophical and historical factors peculiar to a given nature influenced the constitutional tribunal’s jurisdiction, composition and procedure to be fallowed [Assefa; 2001: 6].

**Some jurisdiction empowered their ordinary courts or their special constitutional courts to interpret constitutional issues**. The **American Model** accords ordinary courts the general power to interpret the Constitution [Assefa; 2001: 7].

**The centralized system, on the other hand, empowers one single special constitutional court to interpret it.** For example, **the German Constitutional Court** is conferred the power to interpret the constitution. The court does not settle ordinary disputes unless the case involves a constitutional interpretation [Assefa; 2001: 8].

**The FDRE Constitution empowers the House of Federation to interpret the constitution [Art.** 62(1) and 83(1)].

**The House of Federation is required to be helped by the Council of Constitutional Inquiry** [Art.82 of FDRE Cons]. **The members of the Constitutional inquiry are by large lawyers and this is made to assist the House of Federation by professionals.** In addition, this would enable the constitutional interpretation balanced. That means the nature of **political instrument and legal document of the constitution are to be taken into account to interpret the Constitution.**

There are debates on the issue of interpretation of our constitution by the House of Federation. **Some argue that the fact that it is interpreted by the House of Federation makes it political interpretation rather than professional one.** The House may be biased by politics in interpreting it. The House of Federation is not accessible to any body who wants to lodge a case for constitutional interpretation since it is situated in the parliament.

**On the other hand, it is argued that the House of Federation being the political body can interpret the constitution watch out any political fear**. In addition; the interpretation task carry on by the constitutional inquiry which is mainly consists of lawyers, is the recognition of interpretation of the constitution by lawyers. It is also said that this fits to the unique character of our objective realty [See Mohammed; 1995: 39-48].

**7.4) RULES /TECHINIQUES OF INTERPRETATION**

**7.4.1) RULES OF INTERPRETATION IN GENERAL**

There are rules of interpretation of statutes that developed through time. We will discuss them under this part of the material.

**A) The golden Rule of Interpretation [Paranjape; 2001: 214-18]**

The main purpose of judicial interpretation is to ascertain the intention of the legislature. In ordinary cases the Judges must resort to grammatical interpretation for ascertaining the true intention of the legislature. **The golden rule of interpretation is that “if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound words in their natural and ordinary sense. The words themselves alone do, in such cases, best declare the intention of the law-giver”**

**Lord Wensleydale called grammatical interpretation as the “golden rule” for the interpretation of statutes**. He observed that in construing statutes and all other written instruments “the grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnancy or inconsistency but no further.”

The golden rule of interpretation guides us to interpret words as they are employed in the statute. In short, grammatical interpretation is known as golden rule of interpretation.

**B) The Ejusdem Generis Rule**

According to ejusdem generis rule, **a sweeping clause in a statute which says “all other articles whatsoever” may be interpreted to mean only articles of the same genus or species as those expressly dealt with by the statue.**

Salmond gives an interesting example of ejusdem generis which serves to restrict the meaning of general words to things or matters of the same kind as the preceding particular words. **If a man tells his wife to go out and buy butter, milk, eggs and anything else she needs, he will not normally be understood to include in the term, ‘anything else she needs,’ a new hat or an item of furniture.**

It must, however, be remembered that where words are clearly wide in their meaning, they ought not to be restricted or qualified on the ground of their association with other words..

**C) The Mischief Rule**

The Mischief Rule was first enunciated in Hyden’s case. **When the language of the statute in question cannot determine the true intention of the legislature, the court may consider the historical background underlying the statute, .i.e. the circumstances under which the Bill was introduced and it finally became law.** **The law is to be interpreted in such a way as to suppress the mischief and advance the remedy.**

**The case of Gorris v. Scott, illustrates the rule. In this case the statute provided that animals carried on board a ship should be kept in pens. The defendant shipping company failed to enclose the plaintiff’s sheep in pens, and the sheep had been washed away by a storm. It was proved that if sheep were kept penned as required, they would have not been washed away. The English Court however, rejected the plaintiff’s suit for breach of duty on the ground that the Act had been passed to prevent infection from spreading from one animal to another and should, therefore, not be used to provide for an altogether different mischief.**

As per the mischief rule the court must adapt the construction that shall suppress the mischief and advance the remedy [Avtar; 2006: 51].

**D) Logical Interpretation**

**The logical interpretation has to be used when grammatical interpretation fails in ascertaining the meaning of the statue**. If the words used in the statute are ambiguous and the true intention of the legislature is doubtful, logical interpretation may be resorted to in order to prevent the law from being misused. Thus, there can be two situations in which it is permissible to depart from the ordinary and natural sense of the words of the statute; namely, **(1) it must be shown that the words taken in their natural sense lead to some absurdity, or (2) some clause of the statute is inconsistent with, or repugnant to the enactment in question.**

**E) Liberal Interpretation**

**When litra-legis suffers from ambiguity, liberal interpretation may be resorted to. Liberal interpretation may be either restrictive or extensive. The restrictive interpretation is applied to penal and fiscal statutes. These statutes impose restraints on the liberty of a person or on enjoyment of property**. In such cases, Courts are not allowed to interpret these statutes, in a manner which impose a greater burden on the subject than warranted by literal meaning of the statute. In extensive interpretation, on the other hand, the words are given a wider meaning.

**F) Historical Interpretation**

**At times when the language used in a statute gives no clue to the intention of legislature, courts may consider the historical circumstance attending the local enactment**. But historical interpretation cannot be stretched too far. Thus, lord Wrenbury observed, “the debate upon the bill, the fate of amendments proposed and dealt with by the Committee of either House cannot be referred to, to assist in construing the language of the act as ultimately passed into law with the Royal assent.”

**In several cases, it becomes necessary to take the help of preamble to know the real intention of the legislature.** Preamble is a key which opens the gate way to the thoughts of legislators while framing a particular statute and it quite often helps in remedying the mischief.

**G) General Rules of Interpretation**

**In common law legal system**, courts have framed certain general rules for ascertaining the literal meaning of the words used in a statute.

Some of these rules are as follows:-

1. As stated earlier, **the golden rule of interpretation is that the words of the statutes must prima facie be given their ordinary meaning.** That is to say, so long as the meaning of the statute is clear, certain and unambiguous, judges should not interpret the law.
2. **A statue must be read as a whole in order to give effect to the intention of the framers of it.** As observed by Lord Davey, “every clause of a statute should be construed with reference to other clauses of the Act”.
3. **It is not competent for any court to proceed upon the assumption that the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it had said.** Even if there is some defect in the phraseology used by the legislature, the court cannot aid the legislature’s defective phrasing of an Act or add and amend or by construction, make up deficiencies which are left in the Act.
4. **No statute shall be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary or distinct implication.** It is the cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. A new law ought to regulate what is to follow and not the past.

It must, however, be noted that the statutes dealing with substantive rights and merely with matters of procedure are presumed to be retrospective unless such a construction is textually inadmissible. In other words, if the new Act affects matters of procedure only, then prima facie, it applies to all actions pending as well as future...

1. **It is an important rule of interpretation that a general latter law does not abrogate an earlier special law by mere implication.** The rule is contained in the well known maxim: Generalis specialibus non derogant which means that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, it cannot be construed that earlier and special legislation is indirectly repealed, altered or derogated merely by the force of those general words.
2. **The meaning of the word may be affected by its context.** This is known as the rule of noscitur a socis which means that the meaning of a word be judged by the company it keeps. Thus, sometimes the word “void” used in a statute may also mean “voidable” in the context of reference to that Act....
3. **Penal statutes must be construed strictly. In case there is any doubtful word or phrase in a penal statute it should be construed in favour of the accused.** This, however, does not empower the court to twist the meaning of the word which is clear and unambiguous for the sake of beneficial construction in favour of the accused.

The rules of interpretation stated above are, however, illustrative and not exhaustive. There are other rules as well which guide the court in construing the statutes.

It is significant to note that the political, social, moral or legal changes in a country greatly affect the principles of interpretation. The developing trend towards public interest litigation in modern times bears testimony to this change. The courts now a days tend to interpret law in context of modern social welfare policies through the process of judicial review.

In general, the rules of interpretation are no longer treated as mere compilations for the guidance of judges but they are taken as an instrument of affecting social change keeping in view the needs of the society. The liberalization of locus standi rule in public interest litigation cases and expanding dimensions of epistolary jurisdiction of higher courts best illustrates the point.

**6.4.2) RULES OF INTERPRETATION IN ETHIOPIA [Biset Beyene; 2006]**

Rules of interpretation are very important to judge the judge and to minimize the evils of interpretation. As a result, states fix or set rules and the judge should follow in interpretation.

Yet, **Ethiopia does not have such rules for the draft prepared by the scholars in 1960 was not publicized.** Yet, just like in the case of private international law which has remained as a draft, so does it mean that Ethiopian judges are free to interpret the law as they like?

This question cannot in any way be answered positively for it amounts to giving recognitions to and allowing the evils of interpretation, so, scholars provide that this vacuum or lacuna can be filled by applying the draft even though not published or by using laws of other countries in the same legal system with Ethiopia or following the rules of interpretation of contracts provided in the Civil Code or by combining all these alternative solutions. None of these except those in the Civil Code can. However, be binding for they are not laws recognized by the state. And again, **which one of these solutions Ethiopian judges have been following in practice can not be authoritatively determined for there is no judicial custom yet developed to reveal out the uniformities in the rules of interpretation followed.**

**Yet the civil code provisions dealing with interpretation of contracts can be used by analogy by making some mutatis mutandis (- i.e. necessary changes) to make them applicable to law. Thus, “contract” and “intention of the contracting parties” can be replaced by “law” and “intention of the legislator” respectively, by analogy** that arises from Article 1731 of the Civil Code which analogizes a law fully created contact with law.

In other words, if a lawfully created contact is binding as if it were law and rules of interpretations of the contract are also given, the same rules can be used by analogy to apply to law even for stronger reason.

**Based on these provisions, particularly Articles 1733-1737 of the Civil Code, the rules can be seen to govern what should the judge do when there is:**

**A) Clear law**

B) lack I. II. III. IV. V. VI.

**of clarity in law due to Ambiguity of a word Vagueness of a word**

**The intention of the legislator is not clear Total silence of the law Partial silence of the law Inconsistency or contradiction**

As we have seen earlier, when the law is clear the judge is not allowed to make any interpretation pursuant to Art 1733 Civil Code which forbids not departing from the clear provision of the law. This is due to grammatical or literal interpretation we discussed above that provides that the literal ordinary and natural meaning of the law has to be applied as far as it is clear even if the law may seem injustice. As far as the law is clear

**A) Clear law**

**the legislator is presumed to clearly say what it intended and also intended what it clearly said.** **Hence, there is no need to search for the intention of the legislator as it is clear from the law itself.**

**But, there is an exception to this rule in which the judge may go beyond the clear law.** That is **when it causes absurdity**. For instance, a law provides that any person who inflicts injury of another is liable to pay damages. **A physician may cause injury to the patients when making operations, yet, can the clear law given be applicable to him/her to make him liable to pay damages to this patient? No, because if that would be the case it would create absurdity and that is not intended by the legislator.**

**B) Lack of clarity in Law**

**The law lacks clarity due to ambiguity or vagueness of the word in it or due to the legislator’s intention itself, which is not clear**. These are the situations under which **interpretation becomes necessary to get the true meaning of the law.**

1. Ambiguous Word  **Ambiguous word refers to a word in the law which may have more than one meanings and it is not clear to which one of the meanings it refers**. In this situation the **legislator’s intention must be sought** to arrive at which of the meanings is intended by the legislator.  According to Art 1736 of the Civil Code the whole law must be read and used to choose the contextual meaning of the ambiguous word and this is by contextual interpretation.
2. Vague word  **Vague word refers to a word in the law that has no clear meaning causing lack of meaning or absurdity**. Just like in the case of ambiguous word, again **contextual interpretation can be used.** This is by reading the whole law and interpreting laws through one another referring to how the same word is used in the same law in different provisions and to arrive at the possible meaning in accordance to the subject matter of the whole law.
3. **Not clear intention of the legislator  If the law is not still clear, due to the intention of the legislator which could not be arrived at through contextual interpretation, it requires going beyond the reading of the whole law.**  The judge has to use “expose de motif” interpretation. That is **searching the true intention of the legislator in the “avan proje” of the law**. Expose de motif refers to **the general policy behind the making of the law and this is to referring by the avan proje which means the research works undertaken when preparing the draft of the law and the discussion made when making it.** This may help to arrive at what the legislator really intended in making the particular law. This is also called historical interpretation or mischief rule.
4. Total Silence in the law  **When the area has no law at all, it implies that the law is totally or completely silent on that particular area**. For instance, **the two situations rose as problems of lack of published law on areas of interpretation and private international relations are the good examples of complete or total silence**. Hence, the solution becomes just **only opinion and not binding or authoritative solution**. Because, **in civil law legal system unlike the common law it is only the legislative body and not the judge who has the power to make law and so, the judge cannot make law to fill the gap.**  On the other hand, as far as the case falls under his/her jurisdiction **the judge cannot refuse to give decision** alleging that there is no law for that it would amount to breach of his/her constitutional duty and denial of justice. Hence, s/he may be forced to **use any mechanism s/he thinks right and reasonable to decide the case.** Some of such mechanisms may include referring to the draft of law or previous judgments if there are any in the country or referring to the laws and practice of other countries on similar issues.

**V. Partial silence of the Law**

**Partial silence refers to the situation in which the law provides some rules yet not governing all the relations that fall in that area on which the law is made.** This implies the existence of some relations, which ought to be governed by in the law but actually not.

**In such case logical interpretation can be used to either include or exclude what is left outside the law.** Some partial silences of law are logically incomplete which means they can be completed by logical reasoning using analogy. But other partial silences of law are logically complete in which logical interpretation can be used through reasoning to the contrary to exclude what is left outside the law.

Logically incomplete partial silence in law include illustrative listings of things or persons. These listings are examples and illustrations implying that other things or persons can be added to the list to complete it **by using analogy and ejusdem generic principle i.e. law providing for a general class allows inclusion of similar things.**

The things or persons in the list are only exemplary or illustrative and the things or persons not included and left outside may be of similar or of greater status.

If the thing or person left outside is of the same status a pari reasoning is used to include or add it to the list. A pari implies the same status. For instance if the law provides that all agricultural products should be taxed except products like maize and barley which are tax exempted. The issue whether or not wheat is tax exempted is to be treated under partial silence in law as it is an illustrative listing. Maize and barley are provided in the list as exemplary so that any other similar agricultural product including wheat can be added to it by analogy using a parireasoning for maize, barley and wheat have the same status and there fore it is tax exempted.

What is left out from the illustrative list may even be logically included in to the list for stronger reason by using a fortiori reasoning. For instance if the law provides that a marriage may dissolve by divorce or death of one of the spouses, the issue whether or not a marriage may dissolve by death of both of the spouses can be addressed using partial silence in the law which is illustrative listing to which other causes like death of both of the spouses can logically be added to the list.

Nonetheless, when the partial silences logically complete listing the things or persons left out should be excluded from the list by using the logic known as contrario reasoning. If for instance, the law provides that all cattle except sheep are tax exempted, the issue whether or not a goat is tax exempted can be decided by using a contrario reasoning. That is the law expressly exempts only sheep from taxation and there fore by reasoning to the contrary goats are not exempted. This is also what is known under the rule of “expressio unius exclusion alterius” (i.e. the law expressly providing only for one person or thing implies the exclusions of all others).

**VI. Inconsistency or contradiction in law**

Two provisions of the same or different laws may some times be inconsistent or contradictory. In such a situation, which of the provisions should be applicable becomes the issue that has to be decided by using rules of interpretation. **There are three ways to decide this issue.**

**Firstly, the hierarchical position of the two laws must be seen**. If they exist in different hieratical position like one in constitution and the other in primary or subordinate legislation, the rule applicable is **the higher law prevails over the lower law.** In other words, it must be the higher law that should be applicable and the lower will have no effect for it violates the higher law.

**Secondly, the two provisions may exist in the same hierarchical position cannot serve to decide the issue, because both are in the same hierarchical position.** In such a situation **their effective date i.e. the date on which they entered in to force must be considered as a reference**. Because, the rule is that **the later law prevails over the former law** (exposterior derogate priori). In other words, the new or recent law must be applicable and the old law will have no effect for it is assumed that the legislator who made a mew law that contradicts with an old law of the same hierarchical position intended to repeal the old law by implication.

**Finally, both the contradicting provisions may sometimes exist in the same law like for instance in the same code which implies that neither hierarchy nor effective date can be used to decide the issue because they are in the same hierarchal position even in the same law and also have the same effective date.** The remedy for such a problem is referring to the nature of the laws **whether one is general and the other is special rule** in which it is usually the case. If one is in the general rules and the other is in the special rules lex special derogate generalis (i.e. special Rules prevail over general rules). Thus, the **special rules must be applicable because they are special to the case at hand where as the general rules are applicable where there is no special rule governing the issue.** Even though it may not arise in practice it is also possible to extend the issue to what would be done if both provisions in the same law are general or both are special. In this case it is possible to remedy the problem by applying the less general if both are general and the more special if both are special rules.

CONCLUSION

We have seen that **interpretation of laws means searching for the true meaning of laws as intended by the legislature.** No matter how much effort has been exerted to make laws clear so as to make them able to address their purposes, it is not possible to avoid interpretation.

**Interpretation may be made by judges while they are trying to solve disputes in the cases; this is called judicial interpretation. In addition, we have seen that scholars interpret laws when they write articles, books or giving lectures on laws. This is known as doctrinal interpretation. Further, we have discussed that the legislature itself gives meaning to laws through the means of legislation and this is called legislative interpretation.**

We have seen that there are **canons of interpretation developed through practice and accepted by courts in common law system**. They are:

* 1)  A thing may be within the letter of the statute and yet not within the statute, because not with in its spirit, nor within the intention of its makers.
* 2)  Statutes in derogation of the common law are to be read narrowly.
* 3)  Remedial statutes are to be read broadly.
* 4)  Criminal statues are to be read narrowly.
* 5)  Statutes should be read to avoid constitutional questions.
* 6)  Statutes that relate to the same subject matter (in pari materia) are to be construed together
* 7)  The general language of a statute is limited by specific phrases that have preceded the general language (ejusdem generis).
* 8)  Explicit exceptions are deemed exclusive (expressio unius est exclusio alterius).
* 9)  Repeals by implication are not favoured.
* 10)  Words and phrases that have received judicial construction before enactment  are to be understood according to that construction.
* 11)  A statute should be construed such that none of its terms are redundant.

12) A statute should be read to avoid internal inconsistencies. 13) Words are to be given their common meaning, unless they are technical terms or words of art.

Considering the **legislative history** of a given statute is also important to interpret the same. Thus,

1. Committee reports (including conference reports);
2. Mark up transcripts;
3. Committee debate and hearing transcripts;
4. Transcripts of “hot” (actual) floor debate are important in interpreting  a law.

Further, we have seen that the **House of Federation is empowered to interpret the Constitution**. The members of the House of Federation being politicians be able to interpret the Constitution as a political document. As to its legal aspect, **the House is assisted by the Constitutional Inquiry whose members are mainly lawyers.** However, the interpretation seems to be time consuming.

Furthermore, we have discussed that **the provisos on human rights of the Constitution shall be interpreted in light of the international instruments of human rights**.

We have seen that the rules of statutory interpretation. Pursuant to **the golden rule** , grammatical interpretation should be relied on and the grammatical and ordinary sense of the words should be adhered to unless that would lead to absurdity. **The ejusdem generic rule** restricts the general words to refer to specific things. According to **the mischief rule** the background of the law (legislative history) should be considered to interpret the law to find out the meaning intended by the legislature. We have also seen that **logical interpretation** is a rule to ascertain the meaning of an ambiguous word. The other rule which we discussed is the **liberal interpretation.**