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REPEALS OF LEGISLATIONS

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When I hear a man talk of unalterable law, the effect it produces upon me is to convince me that he is an unalterable fool.

Introduction

Every legislature has the power to repeal laws just as it has power to enact laws. This is done to reflect changing social, political and economic conditions in human society.

Accordingly, one of the most remarkable features of legislation is flexibility in that it can adapt to altered circumstances in the society without losing its nature as a body of official rules and regulations. Law responds to changing social, political, economic and other conditions through the instrumentality of repeals.

This Paper examines the abrogation or revocation of an existing law or statute by legislative act through specific declaration in a new statute or as a result of irreconcilable conflict between an old law and a more recent law. This takes place when a statute no longer has effect, either because a latter

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2. By virtue of section 315(4) (b) of the 1999 Constitution of the Federal Republic of Nigeria, an existing law means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when the section came into force or which having been passed or made before that date comes into force after that date.
statute expressly so declares or as a necessary result of a latter statute which is inconsistent.³

The Paper concludes that in the interests of certainty, it is undesirable that the effect of a statute on existing law should be left to implication. Repeals should therefore be express and specific.

Abrogation of Legislation
A statute is normally repealed or abrogated by express words, but if provisions of a latter statute are inconsistent with those of an earlier one this will imply that legislature intended repeal.⁴ Repeal is the annulment or abrogation of a previously existing statute by the enactment of a latter law that revokes the former law. The revocation of the law can either be done through an express repeal, whereby a statute specifically indicates that the former law shall be revoked and abrogated,⁵ or through an implied repeal, which arises when the latter statute contains provisions that are so contrary or irreconcilable with those of the prior law that only one can remain in force.⁶

Repeal and Amendment: The Difference

⁴. The latin maxim that captures this is leges posteriores priores contrarias abogant (subsequent laws repeal prior laws that are repugnant to them). Laws are however abrogated by the same means by which they are enacted (Jura eodem modo destituuntur quo constiuiuntur).
⁵. For example, section 38 of the Interpretation Act Cap I23, LFN 2004 provides that the enactment specified in the first and second columns of the Schedule to this Act is hereby repealed to the extent shown in the third column of that schedule.
It is imperative to note the distinction between repeal and amendment which is one of degree and not of kind.7 The repeal of a law differs from amendment because the amendment of a law involves making a change in a law that already exists, leaving a portion of the original still standing. When a law is repealed, however, it is completely abrogated.

To repeal is to annul an existing law, by passage of a repealing statute. An act is amended when a portion is added to it, or when a portion is withdrawn and another is substituted for it. Repeal, in contrast, is the elimination of an act or number of its sections without replacing them by provisions having the same or similar effect.

The difference between amendment and repeals was one of the issues for determination by the apex court in Nigeria in Adesanoye v. Adewole.8 The Supreme Court stated its position on the issue thus:

When a law or a statute or a subsidiary instrument is revoked it ceases to be in existence. On the other hand, what is amended continues in existence in its amended form.

**Underlying Principles Governing Repeals of Legislations**

- At common law when a statute repeals another, and afterwards the repealing statute is itself repealed, the first is revived.9 Blackstone stated the common-law position thus: If a statute, that repeals another, is itself repealed afterwards, the first statute is hereby revived, without any formal words for that purpose.10 However, by the

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9. In some countries, this position has changed.
10. So when the Statutes of 26 and 35 Hen. VIII., declaring the king to be the supreme head of the church, were repealed by a statute 1 and 2 Philip and
interpretation Act, 1889\(^\text{11}\) re-enacting Lord Brougham’s Act, 1850,\(^\text{12}\) where an Act passed after 1850 repeals a repealing enactment, it does not revive any enactment previously repealed. Where it substitutes other provisions, the repealed enactment remains in force until the substituted provisions come into operation.

- When a law is repealed, it leaves all the civil rights of the parties acquired under the law unaffected.\(^\text{13}\)
- When a penal statute is repealed or modified as to exempt a class from its operation, violations committed before the repeal are also exempted, unless specifically reserved, or unless there have been some private right divested by it.
- Repeal does not affect any transaction that has been completed under the repealed statute.\(^\text{14}\)
- A latter Act repeals a former one if contradictory thereto.\(^\text{15}\)
- It is a general rule that when a penal statute punishes an offence by a certain penalty, and a new statute is passed imposing a greater or a lesser penalty, for the same offence, the former statute is repealed by implication.
- Generalia specialibus non derogant: where the literal meaning of a general enactment covers a situation for

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11. Section 11.
12. Section 5.
15. The maxim leges posteriors priores contrarias abrogant (later laws abrogate earlier contrary laws) is found in Coke. It is a necessary consequence of the overriding nature of statutes. The principle is however subject to the countervailing principle expressed in the maxim generalia specialibus non derogant.
which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. Accordingly, the earlier specific provision is not treated as impliedly repealed.

- Where a later enactment does not expressly repeal an earlier enactment which it has power to override, but the provisions of the later enactment are contrary to those of the earlier, the latter by implication repeals the earlier in accordance with the maxim leges posteriors priores contrarias abrogant (latter laws abrogate earlier contrary laws). This is subject to the exception embodied in the maxim generalia specialibus non derogant.

Types of Repeal
There are two basic types of repeal. In other words, the repeal of a statute may be either express or implied.

Express Repeal
Repeal is express when a new law or subsequent legislative act literally declares so. In the United States for example, when a bill is passed by the House and Senate and signed by the president, or Congress overrides a presidential veto, the various provisions contained within the newly enacted law are rearranged according to their policy content and cataloged in the United States Code, a compilation of the general and permanent federal laws of the United States.

Therefore, to repeal any element of an enacted law, Congress must pass a new law containing repeal language and

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17. Express repeal occurs where express words are used in a statute to repeal an earlier statute.
the codified statute's location in the U.S. Code.\textsuperscript{19} In this way, Congress (and the president) must follow the same rules and procedures for passing any law. When statutes are repealed, their text is simply deleted from the Code and replaced by a note summarizing what used to be there. Once deleted, the repealed statute no longer has the force of law. All repeals of parts of the US Code are, therefore, express repeals.

In Festus \textit{Ibidapo Adesanoye v. Prince Francis Gbadebo Adewole},\textsuperscript{20} the Supreme Court determined the import of an express repeal. In that case, the stool of Osemawe of Ondo in Ondo State became vacant on the demise of his Royal Highness Oba Itiade Adekolurejo on 21\textsuperscript{st} August, 1991. Following the vacancy, the secretary of Ondo Local Government wrote to the Leyo Ruling House whose turn it was to present a candidate to fill the vacant stool of Osemawe of Ondo. The Leyo Ruling House met and selected 3 (three) candidates for presentation to the kingmakers. Consequent upon the appointment of Festus Adesanoye (the appellant) as the Osemawe of Ondo, the respondent, Prince Francis Gbadebo Adewole, sued the appellants.

The Supreme Court considered the following statutory provisions:

- Section 6A(1) & (2) of the Chiefs Law, 1984 as amended by the Chiefs (Amendment) Edict No. 4 of 1991 which provides:

  Section 6A (1) provides that notwithstanding anything contained in this Edict the Military Governor, in the interest of peace, order and good government may, by order revoke or amend an existing declaration or make a new declaration in

\textsuperscript{19} Including the Title, Chapter, Part, Section, Paragraph and Clause.

respect of any chieftaincy to which this part applies.

(2) Any declaration made in pursuance of this section shall be registered and kept in safe custody by such officer as the Military Governor may direct.”

- Osemawe of Ondo (Chieftaincy Declaration) Order, 1991 states thus:

  In exercise of the powers conferred upon me by section 6A of the Chiefs Edict, 1984 and by virtue of all other powers enabling me in that behalf, I Navy Captain Abiodun Olukoya, Military Governor of Ondo State of Nigeria hereby make the following Order:

  1. The declaration contained in the Schedule to this Order is hereby made in respect of the Osemawe of Ondo Chieftaincy in the Ondo Local Government Area

  2. The Osemawe of Ondo Chieftaincy Declaration of 1958 made under the Appointment and Recognition of Chiefs Law 1954 is hereby revoked. 21

  3. This Order may be cited as the Osemawe of Ondo (Chieftaincy Declaration) Order, 1991 and shall be deemed to have come into force on 3rd day of January, 1984.

  Consequently, the Supreme Court held that the Osemawe of Ondo Chieftaincy Declaration of 1991 expressly revoked the 1958 Declaration by the provision in its paragraph 2.

Implied Repeal

Implied repeal occurs where two statutes are mutually inconsistent. The effect is that the latter statute repeals the earlier statute pro tanto.22 There is however a presumption against implied repeal.23 Repeal is implied when a new law contains provisions contrary to or irreconcilable with those of the former law.

Repeal by implication is however not favored. Courts are unwilling to imply repeal and such an interpretation is adopted only when it is unavoidable.24 In State of Punjab v. Mohar Singh,25 the respondent was prosecuted for making a false claim.26 The claim was made by the respondent before the Act came into force and when the East Punjab Refugees (Registration of Land Claims) Ordinance was in force. The Ordinance was repealed by the Act. The High Court acquitted the respondent on the ground that the Act was not in existence when the claim was made and the prosecution could not be launched against him after the Ordinance was repealed. On appeal, the appellant relied on section 6 of the General Clauses Act that the repeal of the Ordinance could not in any way affect the liability already incurred.

The court held that:

Whenever there is a repeal of an enactment, the consequences laid down in section 6 of the

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22. In so far as it is inconsistent. See Vauxhall Estates, Ltd. v. Liverpool Corporation [1932] 1 KB 733.
24. The two enactments must be so plainly inconsistent with one another, that it could not have been the intention of the legislature that they should coexist: and the later statute prevails over the earlier common law or earlier statute.
25. [1955] 1 SCR 893; AIR 1941 SC 84.
26. This was under Section 7 of the East Punjab Refugees (Registration of Land Claims) Act, 1948.
General Clauses Act will follow, unless, as the section itself says, a different intention appears. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them.

There can be no repeal by implication unless the inconsistency appears on the face of the two statutes. Where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

Implied repeal may be inferred:
- Where there is direct conflict between two provisions;
- Where the legislature intended to lay down an exhaustive code in respect of the subject –matter replacing the earlier law; and
- When the two laws occupy the same field.

In addition, before finding an implied repeal, courts must also overcome a presumption that the

27 Where there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results. The important test to find out as to whether or not there is repugnancy is to ascertain the intention of the legislature regarding the fact that the dominant legislature allowed the subordinate legislature to operate in the same field pari passu the state Act.
legislature enacts a consistent body of law. This presumption has been described as follows:

i. The cardinal rule is that repeal by implication is disfavored
ii. The intent of the legislature to repeal must be clear and manifest
iii. The intent of the legislature is to be ascertained by accepted rules of statutory construction
iv. A repeal by implication obtains only to the extent necessary
v. There are two well settled categories of repeals by implication—(1) where provisions in the two acts are in irreconcilable conflict, the latter act to the extent of the conflict constitutes an implied repeal of the earlier one; and (2) if the latter act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate similarly as a repeal of the earlier act.

As earlier noted, Courts presume that legislature does not intend an implied repeal. The presumption is stronger where modern precision drafting is used. In view of the difficulty of determining whether an alleged implication is really intended, the courts assume that, where it desires repeal, parliament will make itself plain by express words.

In Jennings v. United States Government, it was alleged by the defense that section 1 of the Road Traffic Act 1972 by

28. See, e.g., Stevens v. Biddle, 298 F. 209 (8th Cir. 1924).
29. 46 U. COLO. L.R. @ 306 (1974).
30. See India (1864) Brown & Lush 221 @ p. 224; West Ham v. Fourth City Mutual Building Society [1982] 1 QB 654.
31. [1982] 3 All ER 104.
Implication abrogated the common law offence known as motor manslaughter. Section 1 provided that a person who causes the death of another person by driving a motor vehicle on a road recklessly shall be guilty of an offence.

The court held there was still room for the operation of the common law offence, and it had not been abrogated. Lord Roskill said that earlier cases on implied repeal must be approached and applied with caution, since until comparatively late in the nineteenth century 'statutes were not drafted with the same skill as today'.

In *T.V.A. v. Hill*, 33 defendant’s argument was that an appropriate act granting funds to be used for a dam constituted an implied repeal of provisions in the previously enacted Endangered Species Act, which would otherwise have required discontinuance of the work. The Supreme Court firmly rejected this argument in an opinion by chief justice burger, who pointed out the disfavored status of the concept and its inappropriateness in the circumstances.

In *Friends of the Earth v. Armstrong*, 34 however, it was held that subsequent federal appropriations legislation refusing funds for a protective bulwark around the Rainbow Bridge National Monument to prevent its erosion from flooding created by the construction of a downstream dam impliedly repealed a prior statute that had made the protective work a condition precedent to completion of the dam. 35

The test for determining repeals by implication was stated by A L Smith J thus:

The test of whether there has been repeal by implication by subsequent legislation is this: are

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32. As substituted by section 50 of the Criminal Law Act 1977.
34 485 F.2d 1 (10th Cir. 1973).
35 This decision has been strongly criticized for misinterpreting the contrary federal legislative history in the United States.
the provisions of a later Act so inconsistent with, or repugnant to, the provisions of an earlier act that the two cannot stand together.\textsuperscript{36}

Thus the possibility of implied repeal goes wider however than is indicated by the principle of contradiction. Other interpretative criteria may indicate implied repeal, for example the commonsense construction rule or the presumption that Parliament wishes to avoid an anomalous result.

Repeals can also occur when legislation is amended or comprehensively revised. After an amendatory act is passed, some courts have held that provisions of the original which are irreconcilable with the amendment are impliedly repealed. Courts have thought such repeals even more appropriate where the subject matter in an amended section is inconsistent with the provisions in that same section in the original.\textsuperscript{37}

The logic of these positions can easily be rebutted, however, since a presumption exists that the legislature was cognizant, at least, of the provisions of the act it was amending. Presumably, it would have specified and expressly repealed sections thought to be inconsistent with the amendments. When a legislature undertakes a comprehensive revision of a particular subject, some courts have found this to manifest a strong intent to repeal all existing law on that subject.\textsuperscript{38}

Other Types of Repeals

\textit{Partial Repeal}

\textsuperscript{36} See \textit{West Ham Church Wardens and Overseers v. Fourth City Mutual Building Society} [1892] 1 QB 654, @ p 658.


\textsuperscript{38} \textit{Orange City Water Co. v. Town of Orange City}, 255 So. 2d 257 (Fla. 1971).
A partial repeal occurs when a specified part or provision of a previous Act is repealed but other provisions remain in force. For example, sections 262-270 within the Criminal Code Act had been repealed while other sections remain in force.

Repeal with re-enactment or replacement of the repealed law
A typical situation where an Act is repealed and re-enacted is where the law in the area is being updated but the law being repealed needs to be replaced with a modern version. For example Order 1 Rule 2 of the Court of Appeal Rules, 2007 repealed The Court of Appeal Rules, 2002.

Similarly, the Evidence Act, Cap. E14 LFN, 2004 was repealed and a new Evidence Act, 2011 was re-enacted. Consequently, the long title to the Evidence Act, 2011 provided thus:

An Act to repeal the Evidence Act, Cap. E14, Laws of the Federation of Nigeria, and enact a new Evidence Act which shall apply to all judicial proceedings in or before Courts in Nigeria.

39. For example, the Acts of Union 1800, providing for the union between the formerly separate kingdoms of Great Britain and Ireland as the United Kingdom, was partially repealed in 1922, when (as a consequence of the 1921 Anglo-Irish Treaty), twenty-six of the thirty-two counties of Ireland were constituted as the Irish Free State, and ceased to form part of the United Kingdom. A full repeal occurs where the entire Act in question is repealed
41. For example the repeal of the Poor Laws in England in 1948 reflected their replacement by modern social welfare legislation.
42. Order 1 Rule 2 provides that the Court of Appeal Rules (Nigeria), 2002 is hereby repealed.
43. See also Order XV Fundamental Rights (Enforcement Procedure) Rules 2009 that abrogated the 1979 Rules in Nigeria.
Re-enactment can be with or without amendment, although repeal and re-enactment without amendment normally occurs only in the context of a Consolidation Bill.\textsuperscript{44}

\textbf{Repeals without Replacement}

Repeal without replacement is generally done when a law is no longer effective, or it is shown that a law is having far more negative consequences than were originally envisioned.\textsuperscript{45} Much repeal without replacement are the result of significant changes in society. Major examples include:

- the old Jim Crow laws or blue laws in the US
- The Corn Laws in England,\textsuperscript{46} repealed in 1846 after a passionate campaign.
- Repeal of Prohibition in the United States.\textsuperscript{47}

\textsuperscript{44} A Bill to consolidate the law in a particular area.
\textsuperscript{45} If a campaign for the repeal of a particular law gains particular moment, an advocate of the repeal might become known as a "repealer". This happened in 19th century Britain to a group in favor of the re-separation of Ireland from the United Kingdom.
\textsuperscript{46} Corn Laws are former British laws regulating grain trade or a group of laws introduced in Great Britain in 1804 and repealed in 1846 that were designed to restrict the importation of foreign grain by imposing duty on it. In other words, Corn Laws were trade laws designed to protect cereal producers in the United Kingdom of Great Britain and Ireland against competition from less expensive foreign imports between 1815 and 1846. The laws were introduced by the Importation Act 1815. These laws are often considered as examples of British mercantilism. According to David Cody, they were designed to protect English landholders by encouraging the export and limiting the import of corn when prices fell below a fixed point. They were eventually abolished in the face of militant agitation by the Anti-Corn Law League, formed in Manchester in 1839, which maintained that the laws, which amounted to a subsidy, increased industrial costs. After a lengthy campaign, opponents of the law finally got their way in 1846—a significant triumph which was indicative of the new political power of the English middle class. See Schonhardt-Bailey, C. (2006) \textit{From the Corn Laws to Free Trade: interests, ideas, and institutions in historical perspective}, (Cambridge, Mass.; London: The MIT Press, 2006). See also \url{www.en.wikipedia.org/wiki/corn_laws}. Accessed 15--5-2012.
• The massive Statute Law Revision Act 2007 in the Republic of Ireland, through which 3,225 Acts were repealed, dating back over eight centuries to 1171 and the earliest laws enacted by England when it began its invasion of Ireland.  

**Reasons for Repeals**

- When the law is redundant
- when a law is no longer effective,
- Where it is shown that a law is having far more negative consequences than were originally envisioned.
- When there are significant changes in society

**How to Effect Repeals**

A broad brush approach is not adequate. To repeal, for example, “all provisions inconsistent with this Act” serves merely “to substitute for the uncertainty of the general law an express provision of equal uncertainty” No particular form of words is necessary to effect a repeal but it is recommended that the simple form of words “is repealed” be generally adhered to. The phrase “is hereby repealed” is in widespread use but “hereby” is redundant.

47. Enacted by the Eighteenth Amendment to the United States Constitution, it proved to be so ineffective that it had to be repealed by the Twenty-first Amendment. This is the only constitutional amendment to be repealed in the U.S.

48. The statutes repealed include a number of Acts of significant historical interest, including an Act of 1542 providing that the Kings of England shall be Kings of Ireland. This Act is the largest single repealing statute in the history of Ireland.

49. If a campaign for the repeal of a particular law gains particular moment, an advocate of the repeal might become known as a "repealer". This happened in 19th century Britain to a group in favor of the re-separation of Ireland from the United Kingdom.


51. For example, Order 1 Rule 2 Court of Appeal Rules 2007 provides thus: The Court of Appeal Rules, 2002 is hereby repealed.
i. The Evidence Act, Cap. E14, LFN 2004 is repealed.
ii. Part II of the Evidence Act 2004 is repealed.
iii. Section 4 of the Evidence Act 2011 is repealed.
iv. Section 4 of the Evidence Act 2011 is amended by repealing subsection (2).

• With regard to the repeal of subsidiary legislation, practice varies considerably. In many jurisdictions, the practice is to “revoke” rules, regulations and orders and to “cancel” proclamations, by-laws, and notices. The word “rescind” is also used. The extent to which practice differs throughout the commonwealth strengthens the view that the varying distinctions traditionally drawn serve no useful purpose and have no logical foundation. It is suggested, in the interest of clarity and consistency, that the “is repealed” formula should also be adopted for all forms of subsidiary legislation.

• When an Act contains a number of repeal provisions, these should not be scattered in the Act. Repeals should be assembled in one section or, if more convenient, in a schedule. The same principle applies to the drafting of consequential amendments.

• If more than one provision is to be repealed, care should be taken to construct the repealing provision so that it is not misleading or difficult to comprehend.52

• The repeal of an enactment constitutes the amendment of the Act containing it. An Act or provision of an Act may be repealed in the same Session of Parliament in which the Act was passed. Repeal revokes or abrogates an Act or part of an Act. For delegated legislation the term ‘revoke’ is used instead, to like effect. A provision can effect repeal only where contained in an instrument having power to override

the Act in question. This may be another Act, or an item of delegated legislation made under an Act conferring power to repeal. An Act may repeal itself, or any provision contained in it. 53

- A concurrent resolution of the Legislature is not effective to modify or repeal a statutory enactment. 54 To repeal or modify a statute requires a legislative act of equal dignity and importance. Nothing less than another statute will suffice. A concurrent resolution of the two houses is not a statute. 55

- When legislation is repealed, the courts may subsequently face problems of statutory interpretation. Most of these problems involve the precise definition of what has been eliminated by the repealing act. These questions occur because legislatures seldom undertake a comprehensive review of the laws in force before enacting new legislation. Consequently, they are often unaware that a bill under consideration contradicts one or more previously enacted statutes.

- Repeal 56 amendment may take the form of, or include, repeal. If for example a section of an Act is deleted, it can be said that the section is repealed but the Act is amended. In so far as an amendment also constitutes repeal, the rules relating to repeals will apply. 57

- If a latter Act contains a provision such as, ‘all provisions in any other law inconsistent with this Act are repealed’, then it becomes a matter of interpretation for the court to find out

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53. See, e.g. the Government Trading Funds Act 1973, s 7 (5).
56. To ‘repeal’ an Act is to cause it to cease to be part of the corpus juris or body of law. To ‘repeal’ an enactment is to cause it to cease to be in law a part of the Act containing it.
57. See Francis Bennion, Statutory Interpretation, third edition (London; Butterwoirths, 1997) 211.
what provisions are inconsistent and the scope and extent of the repeal.  

In Stowers v. Darnell, the appellant had been convicted of using on a road on 11 July 1972 a motor vehicle with defective tyres, contrary to s 64(2) of the Road Traffic Act. However, on 1 July 1972, s 64(2) had been repealed by the Road Traffic Act 1972 s 205(1) and Sch 9. Section 40(5) of the 1972 Act (which was a consolidation Act) reproduced the effect of s 64(2).

The court held that the conviction related to alleged offences under what was at the time in question a non-existent Act, and would therefore be quashed. It was no answer that the repealing Act included provisions in similar terms

The practice of double repeal

It is a common practice in the drafting of repealing provisions to state in the body of the Act that the enactment shall ‘cease to have effect’ and also include it in the repealed Schedule. The object is to draw the repeal to the attention of legislators considering the Bill for the Act (by including it in the body of the Bill) while at the same time enabling the repeal schedule to include all repeals made by the Act.

The same principle applies to the abrogation of a common law rule. If a later Act makes contrary provision to an earlier, Parliament is taken to intend the earlier to be repealed. The same applies where a statutory provision is contrary to a common law rule. This is a logical necessity, since two inconsistent laws cannot both be valid without contravening the principle of contradiction.

Effects of Repealing a Statute

60. 1960.
Repeals of Legislations

The effect of an implied repeal is the same as that of an express repeal; but the leaning of the courts is against implied repeal. At common law, the repeal of an Act makes it as if it had never been, except as to matters past and closed. Under the common law of England and Wales, the effect of repealing a statute was "to obliterate it completely from the records of Parliament as though it had never been passed." This, however, is now subject to savings provisions within the Interpretation Act 1978.

According to section 6 of the Interpretation Act, the repeal of an enactment shall not:

- revive anything not in force or existing at the time at when the repeal takes effect;
- affect the previous operation of the enactment or anything duly done or suffered under the enactment;
- affect any right, privilege, obligation or liability accrued or incurred under enactment;
- affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the enactment;
- affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

In *University of Calabar v. Dr. Inyang Oduok*, the court of Appeal construed the intent of the provision of section 6(1) of

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62. See, e.g, *Eton College v. Minister of Agriculture* [1964] Ch 274.
63. See *Kay v. Goodwin* (1830) 6 Bing. 576, per Tindal C.J.
the Interpretation Act. According to the court, the provision of section 6(1) of the Interpretation Act deals with the inability of a repealed enactment to revive non-existing rights and their incidence in spite of the repeals of an enactment. Accordingly, the provision would for most of the part be relevant in a consideration of cause of action jurisdiction but would only be relevant in the case of adjudicatory jurisdiction in situations where judgment had actually been delivered before the repeal of an enactment. In such a case, a right or privilege arising from the judgment must have accrued to one of the parties in the case.

Part of the intent of section 6(1) of the Interpretation Act is that such a right that had accrued would not be taken away or perhaps so easily except the new legislation is duly retrospective.

On whether Decree No. 107 of 1993 repealed section 230(1) of the 1999 Constitution of the Federal Republic of Nigeria the court held that:

Decree No. 107 of 1993 did not repeal, but amended section 230(1) of the 1979 Constitution by divesting the State High Court of exclusive jurisdiction in matters concerning the Federal Government or its agencies, and vesting the same in the federal high court. In the instant case, though the respondent’s suit was commenced in 1987, the judgment of the trial court delivered on 15th May 1996, after 17th November 1993 when Decree No. 107 of 1993 had come into existence, was null and void because as at 15th May 1996 the trial court had been divested of jurisdiction to entertain any civil cause or matter arising from

the administration and control of the Federal Government or any of its agencies.\footnote{67} \footnote{[2007] 12NWLR Pt. 1049, p. 665.}

However, in \textit{Unilorin v. Adeniran},\footnote{68} \footnote{(2007) 6 NWLR (Pt. 1031) 508-509.} the court also considered the effect of repeal of a statute. The import of section 6(1) of the Interpretation Act according to the court is that pending proceedings are automatically saved in spite of the repeal of a statute. In other words, by the use of the words “shall not”, the section raises a presumption against retroactive legislation. In the instant case, there was nothing in the amended section in Decree 107 of 1993 that expressly divested State High Courts of the jurisdiction to hear cases that hitherto were pending in such courts. If the promulgators of the Decree had so intended they would have expressly stated so accordingly, the vested rights of parties cannot be affected by subsequent legislation. The vested rights of the parties would be rights vested in them in law and equity when the cause of action arose. Thus, in law, a man may not have retroactive rights and privileges, and cannot be subject to retroactive sanctions. In the instant case, the change in the law contained in section 230 (1) (p), (q) and (s) of the 1979 Constitution as amended by Decree 107 of 1993 did not affect the accrued or vested rights of the respondent but only changed the venue of the trial to another court. In other words, the change in the law was not retroactive.

The Court continued:

The applicable law for the determination of an action is the substantive law for all intents and purposes existing at the time the cause of action arose and hearing of the case commenced. A change in law will not affect existing rights and
obligations unless the change is specifically made retroactive.

On whether legal doctrine can override statutory provisions, the court posited as follows:

A rule or doctrine cannot override express provisions of a statute. Consequently, the doctrine of implied repeal by plain repugnancy cannot override specific provisions of the constitution.

On the effect of a revoked enactment, the Supreme Court per TOBI, J.S.C also stated as follows:

Where a subsequent legislation or order revokes an earlier legislation or order, courts of law do not have jurisdiction to still rely on the revoke legislation or order. It is trite law that a revoked legislation or order has no more force of law from the date of the revocation and a court cannot by its interpretative jurisdiction revive the revoked legislation because it is moribund or dead from the date of the revocation.

In *Omoyeni v. Governor of Edo State* the Court of Appeal also considered the effect of repeal of a statute. In that case the appellant joined the public service of Edo State (then as Mid-Western State) on 11 May, 1965. In 1991, he became the substantive Auditor-General of Edo State. On 30 September, 2000 when he was 54 years of age, he was retired from office as the Auditor-General of Edo State by a letter signed on the instruction of the Governor of the state.

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70. [2004] 5 NWLR Pt. 865, p. 182 C.A.
The appellant’s case was that he could only be removed from office in accordance with the provision of section 127 of the 1999 Constitution of the Federal Republic of Nigeria. 71

The respondents’ case on the other hand, was that the appellant was removed from office in accordance with the provisions of the Pensions Act 72 and the Civil Service (Re-organization) Decree No. 43 of 1988 both of which provide that the compulsory retirement age of all grades of civil servants should be 60 years of age or 35 years of service, whichever is earlier. It was also the argument of the respondent that the appellant had been in service for more than 35 years as at the date of his retirement and that in the circumstance, his retirement was proper.

The Court of Appeal however held that:

When a statute expires or has been repealed, it becomes a dead letter from the expiry date or the effective date of the repeal, except as to transactions past and closed there under; and except for the purpose of those actions which were commenced, prosecuted and concluded whilst the statute was in existence and except further to the extent that the repealing statute provides for any savings. In the instant case, the Civil Service (Re-organization) Decree No. 43 of

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71. A person holding the office of Auditor-General under section 126(1) of this Constitution shall be removed from office by the Governor of the State acting on an address supported by two-thirds majority of the House of Assembly praying that he be so removed for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct. An Auditor-General shall not be removed from office before such retiring age as may be prescribed by law, save in accordance with the provisions of this section.

72. Section 4(1) of the Pensions Act provides that every officer shall retire upon the age of 60 years, so however, that for officers retiring on or before 31st March, 1977 the compulsory retiring age shall be 55 years.
1988 under which the respondent purported to act was repealed in 1995 before the appellant was retired. In the circumstance, the Decree did not justify the 1st respondent’s retirement of the appellant.

In view of the foregoing, the court declared that the retirement of the appellant was premature, unconstitutional, null and void, and of no effect. The court further ordered that he should be re-instated forthwith to his position as the Auditor-General of Edo State since he has not yet attained the retiring age of 60 years.73

Conclusion
Repeal may be express or implied. Implied repeal creates complex problems for the courts. Judges are often faced with the arduous task of reviewing legislative history to determine the scope and purpose of the repealing legislation, a job the legislature ought to have performed. Implied repeals can only be sustained by straining to find a basis for imputing legislative intent.

There is a presumption that the legislature knows the law and hence would have repealed expressly an inconsistent law if that was its intention. Repeal by implication is also opened to serious objection in that the legislature has failed to perform its basic statutory function of communicating the law as well as determining it. Therefore repeals by implication should be discouraged. Where parliament desires repeals, parliament should make itself plain by express words.