Lack of Differentiation in Legal Rules

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Abstract

The notion of a lack of differentiation between jus cogens and other norms is based on the emergence and definition of the legal norm. Several theories have emerged that justify the emergence of legal norms in terms of their compulsory nature and the strength of their influence. They have been divided into different legal norms, including jus cogens and the Organization, other related to public order with similar labels. And in our view there is no justification for this division, and we see that legal rules are one legal rule from their origin to their abolition and invalidity. Not every rule of law has its own specificity, but all characteristics are common to it. No rule can have its own features, but all rules have one of the reasons, however different the nomenclature may differ, are jus cogens and must never be contravened.

Keywords: "Jus cogens legal rule, public order, complementary legal rules, flexible criterion, formal criterion."

Introduction

Where the idea of the multiplicity of legal rules is one of the precursors of legal jurisprudence, and multiple labels for the legal rule have emerged, including the legal rules (**Jus Cogens, Complementary, Interpreted & Related**) to the public order and the like. We believe that these labels are unjustified; With regard to the fact that the legal rule is one in its peculiarities in terms of obligation, generality and impartiality, even if the penalty associated with it differs, and in order to discuss the unity of the legal rule, we decided to put forward the idea of the lack of differentiation between the different legal rules, and we will raise the problem of the research, its methodology and structure through the following:

First: the research subject:

Through this research, we address a number of questions that we tried to answer, the most important of which are:

- Is the legal rule the same from its inception to its expiration?
-Is there a differentiation between jus cogens, complementary or explanatory legal rules?
- What is the resulting effect on the unity of the legal base in the case of the unity of its nomenclature?

Second: Research Methodology and Structure:
Where we decided that the descriptive-analytical approach, and the extrapolation of legal texts, should be a starting point in the research material, and we divided the research into two sections, as we allocated the first topic to the concept of the peremptory rule and its characteristics, and in the second topic we devoted it to proving the unity of the legal rule and its impact.

The first topic
What is the concept of jus cogens legal rule?
For the purpose of clarifying the concept of jus cogens legal rule, it is necessary to address its definition, clarify its characteristics and distinguish it from similar situations; Therefore, in this topic, we review two demands, the first of which we devote to the definition of the jus cogens legal rule, and its characteristics, and we address in the second demand to situations similar to the jus cogens legal rule, as follows:

The first demand: Definition of jus cogens legal rule

As there are two approaches among legal jurists in explaining the concept of the jus cogens legal rule, as the first approach goes to clarifying its concept through the impact of violating it, while the other approach is satisfied with providing examples and applications, in an effort to clarify its concept.

As for the jurists who tended to find a definition of the jus cogens legal rule, their idea of the definition was similar, as their definitions came with relatively similar meanings, as the productive effect of violating it was known, as some of them defined it as: "Every agreement that falls on violating this rule is void" (90), it is clear through the aforementioned definition that the key to defining a jus cogens legal rule is the amount of legal effect that results from its violation or conformity.

While others went as follows: "The rules that compel individuals to follow and respect, and it is not permissible for individuals to agree on anything that contravenes its ruling, and every agreement between individuals to violate its provisions is considered a void agreement"[1].

In general, some remarks can be made on the aforementioned definitions, as follows:

1- The definitions did not address the nature of the jus cogens rules and were satisfied with the statement of the ruling that contradicts them, and this is considered a defect in clarifying the essence and clarifying its concept.
2- The obligation of legal rules to be followed and respected is not limited to jus cogens legal rules only, but goes beyond all legal rules, including instructions, regulations, and regulations.
3- The definitions looked at the rule of violation, and it was more appropriate for the identifier to search for its gender and specificity, or at least to explain it with an example[2].

As for those who went to clarify its concept through examples, they considered it as: "It is the rules that individuals are not allowed to agree on anything that contradicts its ruling, such as the rule that prohibits murder or prohibits theft[3].

The notes that are recorded on the aforementioned definition are as follows:

1- The definition of the definition combines the effect of the violation, and the characteristics that the legal rule should have.
2- The definition was not legal in the strict sense, although the definition of the example is blamed for not showing what the definition is perfectly or completely, yet the definition of the example is considered the lowest level of definition.[4]

3- The jus cogens rules are not limited to a negative judgment such as refraining from doing an act[5], rather its ruling can be a positive obligation such as doing an action, and it goes without saying, there are many resources that show the positive commitment in the legal rule and its being one of the jus cogens rules, as is the case In Article 192 of the Iraqi Civil Code No. (40) of (1951), as amended, as the following text came in it: "It is necessary to return the usurped money in kind and hand it over to its owner in the place of usurpation, if he is present…" There are more examples in this regard[6].

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[1] Dr.. Abdul Razzaq Al-Sanhoury, Mediator in the East of Civil Law, Dar Al-Nahda Al-Arabiya, 1964, 2nd Edition, Part One, pp. 432-492.
[2] Logic scholars go to defining the essence with its special concept in explaining its gender or type with the exclusion of the attributes that share with others to form a special concept of whatever it is. Himself plants and inanimate objects, while in particular (the speaker) brought man out as speaking about other animals, in order to characterize man with speech rather than others. See Logic Al-Muzaffar, Part One, 25-30
[3] Dr. Hassan Kera, The Fundamentals of Law, 2nd Edition, Dar Al Maaref, Egypt, 1959, p. 42.
[4] Sheikh Muhammad Reda Al-Mudhaffar, Logic, 3rd Edition, Dar Al-Maaref, Beirut, 1980, p.: 122.
[5] Consider Article 71 of the amended Iraqi Civil Code No. 40 of 1951, which prevents real estate and movables belonging to the state or legal persons from disposing of them, as the second paragraph of the aforementioned article says: See Article 114 of the Egyptian Civil Code No. 131 of 1948, as it states: "The behavior of the insane and the lunatic is void if the act is issued after the registration of the interdiction decision.
[6] See the text of Article (114) of the Qatari Civil Code No. 22 of 2004, as it says: "1- The behavior of the insane and the lunatic is void, if the act was issued after the registration of the decision of interdiction. Contrasting it, and if the agreement is reached, it is void, that is, it has no effect. Likewise, it may be

Where it can be summarized what was mentioned above, that the jus cogens legal rule was known either as being associated with the sanction of nullity when violating it, or it was known by the example and its nature was not clear, and it was more appropriate to clarify its nature in a manner that suits the legal definitions of the terms that are raised in the law.

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The second demand: Characteristics of jus cogens law

As it appears from the definitions that were included in the previous section, that the jus cogens legal rule is characterized by characteristics that make it unique from other rules, and these characteristics appear as follows:

Section one: Concerning the public interest

It is clear from the statement that the jus cogens are closely linked to society, and the peculiarity of this connection is with the ruling covered by the jus cogens rule, as if a person violates the legal norm is considered to be in violation of the public interest of society; Since the attribute of being linked to the public interest is definitive for the peremptory rule, and the acceptance of the link derives from that basic value in society and it is not permissible to neglect it at all. Considering that society is the protector of that interest, at the same time, the interest is protected by law, and the connection between the core values and the interests taken by society and jus cogens rules are unique to jus cogens[7].

After referring to the aforementioned, the interest in its undefined and unclear concept, which varies according to time and place, and at the same time, interest has more than one meaning according to the situation, just as the concept of interest in a social, legal or political perspective, for example, political interest is its means and goal. Reconciling multiple interests, whether those interests are private or public, compatible or conflicting, such as the interest of the majority in making decisions and holding elections, in which the interest of the individual is sacrificed for the sake of the dominant interest, and the general interest of society does not have a permanent presence in it[8].

And according to what was mentioned above, the interest in the legal concept and the legal base in particular does not match the political interest; By virtue of each one of them has a means, an end and an application, and this application in the political concept of interest takes into account the interest of the majority[9], and the political interest ends with the end of the rule in the country's administration or in the presence of a political symptom with which that interest can be removed; The existence of the political incident, as is the case with the existence of a treaty with a state in which the interest of the country was taken into account, except that the outbreak of rivalry or war or the severing of the diplomatic relationship with that state leads to the destruction of the interest on which it was concluded, while we see that the jus cogens legal rule must be from the beginning of its emergence and legislation A general and consistent rule that does not exclude a specific individual, and does not take into account the interest of the majority of the members of society, even if the majority is absolute. Rather, it must include all individuals who are subject to its application. This existence ends except by the legal methods prescribed for it, or by the disappearance of the interest for which the legal rule was found[10].

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understood from the peremptory legal rule that the violation is not permissible implicitly and not explicitly, as is the case with the well-known legal rule "a formal contract is not concluded without an official paper", see Article 1059 of the Qatari Civil Code No. 22 of 2004 .

[7] Dr.. Abdel Moneim Al-Badrawi, The Introduction to the Study of Law, Dar Al-Nahda Al-Arabiya, Beirut, 1966, p. 450.

[8] Dr. Sadeq Muhammad Ali Al-Husseini, The Subjectivity of the Counter Administrative Decision, Ahl al-Bayt (Peace be upon him) Journal 2014, p. 30

[9] Dr. Muhammad Mustafa Hassan, New trends in the theory of deviation in power, Journal of Government Issues Management, Arab Union House for Printing, Kuwait, No. 3, 1979, p. 9

[10] Dr. Jassim Kadhim Kabashi Al-Aboudi, The Authority of the Administrative Judge in Assessing the Defects of Cancellation in the Administrative Decision (Comparative Study) PhD thesis submitted to the University of Baghdad College of Law, 2005, p. 147.

According to the above, we note and summarize the following:

1 - There is no legal rule without the legislator looking at the desired interest and the wisdom of its legislation. The jus cogens rule is not unique to this advantage over other rules, but rather it is a feature of all legal rules.

2- Where the legal legislator, when a legal rule is established, must envisage all the individual interests in society, which in total achieve the public interest, and then the existence of the interest in the legal base comes from the community in its first emergence, even if societies changed over time, another society comes, and this interest remains It applies to them in continuity, even if there is no interest in them, and then the legislator seeks from time to time to amend or cancel some legal rules with alternative legal rules according to the immediate interest, as the French legislator did in his amendment of the Civil Code in 2016 with the famous Catala project.

3 - The interest may appear in a particular way, but in its application it benefits the public interest, as are the rules regulating the rulings of the position of the President of the Republic, or those rules that regulate the powers of the position of the Prime Minister, but it remains a public interest in which everyone who holds the aforementioned positions is taken into account.

Section Two: Describe the peremptory norm of jus cogens

Legal jurists go without exception that the adjective peremptory remains inherent and never ceases when formulating the legal rule, and as a result of this connection and coherence a criterion was established to distinguish between the different legal rules according to who goes to this distinction, and it was called the verbal criterion, and they made it distinct for the peremptory rule from other rules Legal, and as we will see in the following section, this criterion cannot be relied upon as a regulator to distinguish between the different legal rules.

According to this connection and the concept of violation, the legal rule that is not peremptory can be separated from the obligation to comply, ie: it can be said to violate it.

The aforementioned link between the legal rule of persuasion and the obligation to follow is based on the fact that peremptory rules begin to be formulated with peremptory words “it is not permissible, must, must, be obligatory…”, to give an impression of the wording of the command in its meaning. However, this assumption is not free from objection that all Legal rules share the peremptory character, and therefore it is not valid for the peremptory character to be a characteristic or characteristic of the peremptory rule alone, and an example of this can be given as stipulated in Article (92) of the Iraqi Civil Code No. 41 of (19519), as amended, as The text in it came as follows: “Paying the deposit is considered evidence that the contract has become final and cannot be rescinded, unless the agreement stipulates otherwise.” We note in the previous text the use of the term “impermissibility” by the Iraqi legislator, and it is recognized by the legal scholars who support the standard The verbal criterion who go to make the verbal criterion in the formulation of the jus cogens legal rule that it is not permissible to agree on the contrary; By virtue of what was stated in the legal rule, what indicates the non-violation of the word “impermissibility”, as stated in the aforementioned text, however, the legislator made an exception at the end of the paragraph by the permissibility of dealing in contrast to it, and this is contrary to the feature of peremptory rules that are characterized by a prescriptive character in drafting, by virtue of The essence of the legal rule does not allow the element of choice, exclusion and contravention in the face of its ruling[11], otherwise it becomes a normal rule like the rules of religion and morals[12].

[11] Dr. Salah Jubeir Al-Busaisi, The Role of the International Court of Justice in Developing Principles of International Humanitarian Law, Arab Center for Studies and Scientific Research, Dar Al-Salaam Legal Library, 2017, p. 137, and Dr. Rabea Hamid also looks at the penal state function in contemporary society, rooting the general theory, Article published in the National Criminal Journal, Volume 8, No. 2, July 1965, p. 229.

[12] Dr. Abdel-Baqi Al-Bakri, Zuhair Bashir, Introduction to the Study of Law, pg. 60, and see: Hossam Mohsen Abdel-Aziz, The Authority of the Criminal Administration in Imposing a Delay Fine in the Administrative Contract and its Guarantees, (a comparative study) Arab Center for Studies and Scientific Research, 2018, p. 22.

We believe that the adjective of using peremptory terms "impermissible, and must" and the like in the legal base to confer on it the character of peremptory, is excluded; Because it will give a superficial description of the legal base on the grounds that it is just an order or a prohibition, and empty the legal base of its objective content related to the higher interests and values of society. Which contradicts the pluralism in the sources of the legal base, such as custom, religion, and the principles of justice and equity[13].

The third section: its association with nullity:

It is well-known that the accompanying and accompanying nullity are associated when violating the legal rule[14], and we see the link between the peremptory rule and nullity inaccurate. The explanation for this is that jus cogens legal rules when legislated are linked to multiple and varied penalties according to the existence of the legal base in their subject, such as the rules of criminal law, the rules of administrative law, the rules of constitutional law, and civil law, and the connection of some of these legal rules is not limited to invalidity only, but also to the imposition of fines Imprisonment, imprisonment, dismissal, and reprimand, but there are many jus cogens rules that are accompanied by relative invalidity, especially those related to the special interests of a specific title, as is the case in the provisions related to the minor, as civil law jurists say that the actions of the minor between benefit and harm are suspended. The person in possession of the permit must be "relative invalid or voidable"[15], and this is the clearest form of relative invalidity, taking into account that the actions of the young person with what is small is what is meant by the legal rule that perseveres in limiting his actions to preserve his private interests, and with this, the term "small" is a general concept that includes Every small thing, in addition to the fact that invalidity is an effect that follows the procedures after the act and not the origin of the violation. He went to the invalidity of the entire contract, but invalidates the violating part and maintains the correct behavior[16].

In the light of what was mentioned above, it becomes clear that invalidity is not the only form of the penalty that is linked to the jus cogens legal rule, and it is clear from all of that in the criminal law, most of whose rules are peremptory, such as drug dealing, as its contracts are considered void due to the illegality of the shop, and at the same time they are associated with The criminal penalty for committing the crime, as well as for incestuous marriage, as the contract ends with nullity and is reinforced by the penal penalty[17].

The second topic: Legal base unit

Legal jurisprudence has always distinguished between legal rules according to multiple labels, and set criteria for differentiating between these rules, but this distinction does not fit to differentiate between the different types of legal rule, for legal rules according to legal jurists are divided into peremptory rules and complementary or interpreted ones. The truth is that this division is unjustified and does not serve as a criterion for distinction, as is the case in the formal and objective criteria between legal rules, and the aforementioned talk about legal rules in terms of origin, not in terms of application. Therefore, they have a difference between the different legal rules, and in order to discuss this confusion we will divide the topic into two demands: we dedicate the first to the normativeness of legal scholars to distinguish between legal rules, and in the second requirement we talk about the unity of legal rules

[13] Dr. Yahya El-Gamal, Constitutional Law, Dar Al-Nahda Al-Arabiya, Cairo, 1985, p.29.
[14] Dr. Muhammad Ali Al-Badawy Al-Azhari, The General Theory of Commitment, Volume 1, 2nd Edition, Al-Kitab Publishing Corporation, 2018, p.: 176.
[15] Dr. Muhammad Azmi Al-Bakri, Encyclopedia of Jurisprudence, Judiciary and Legislation in the New Civil Law - Volume Ten, Dar Mahmoud for Publishing and Distribution, 2018, pg. 500.
[16] Dr. Counsellor Amjad Anwar Al-Amrousy, The Adequate Encyclopedia of Explaining Civil Law, 5th Edition, Dar Al-Adala, 2015, p. 11. Also: The Egyptian Court of Cassation's decision of Appeal No. 7790 of Judicial Year 74 on April 4, 2006 went on to say: "Every crime constitutes an assault on public order.
[17] See the text of Article 28 of the Narcotics and Psychotropic Substances Law No. 50 of 2017, the law is published in the Iraqi Gazette, Issue 4446, May 2017, which stipulates (punishable by life or temporary imprisonment and a fine of no less than (10,000,000) ten million dinars and not more than (30,000,000) thirty million Dinars for anyone who commits one of the following acts:
First: Possess, possesses, buys, sells or owns narcotics, psychotropic substances, or chemical precursors listed in Schedule No. 1 of this law, or one of the plants from which narcotics or psychotropic substances are produced, or delivers, receives, transfers, assigns them or exchanges or disbursed in any capacity whatsoever, or mediated in any of that, with the intent of trading in it in any way, in cases other than those permitted by law).

The first demand

Normative distinction between legal rules
Legal jurists hold that there are several criteria to differentiate between a jus cogens rule and other rules, and we will address these criteria as follows:

Section one: the formal standard

The formal criterion is one of the oldest legal standards that were used to distinguish between the different legal rules. This criterion is according to the following[18]:

First: The legal rule includes an explicit text that it is not permissible to violate it, while the rest of the rules, especially complementary or interpreted ones, include a text that it is permissible to agree to violate them explicitly or implicitly[19].

According to the aforementioned, we see that most of the legal rules may be violated without this violation having any effect, and many legal rules lose their binding force on which they arose. All moral, religious, social and political rules, no values remain for the legal rule by saying that it is binding[20].

Second: The basic principle in legal rules is that they are peremptory rules unless there is an explicit text that it is permissible to violate them.

This saying is quite strange. By virtue of the fact that the legal rule when divided into two rules, one of them is apparent in its text and cannot be violated, and the other is permissible to violate it with an explicit text. Or interpreted despite the direction of the two parties' will to implement the intended application and to exclude the other, and with this saying the role of legislation and the wisdom of legislation has been deprived of the spirit of the legal rule, except that it is said that many of the legal rules origin in them are two rules (compulsory and complementary), the first is obligatory to be followed, and the other It is not binding, and as a whole, the force for the violation becomes stronger than the adherence to the peremptory legal rule, and this is what no one has said.

We also see, according to what was mentioned above, that the exclusion of the legal rule to be applied was not by the agreement of the parties to exclude it of their own free will, but rather the exclusion because of the presence of a text or reference in the legal rule allowed them to exclude this, otherwise speaking otherwise will be based on that all parties can fabricate the rule legal and binding on others[21].

Third: The legal rules are considered established unless the text includes the invalidity of every agreement that contradicts them[22].

The established rules are those complementary or interpreted rules whose name is described as complementary rules, and by virtue of them complementing the will of the contracting parties in relation to the issues that were omitted to be mentioned in their agreement.

It is noted on the reasoning that it is said that the legal rules should be complementary rules unless the parties agree on their order, and this saying is very unlikely, for the following reasons:

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[18] Dr. Suleiman Morcos, Introduction to Legal Sciences, Second Edition, 1952, Publishing for Egyptian Universities, p. 91.
[19]Dr. Ahmed Salama, Introduction to the Study of Law, Book One, The Theory of Legal Rule, 1974, without a publishing house, p. 93.
[20] See Article 93 of the Iraqi Civil Code: "Every person is qualified to contract unless the law decides that he is not qualified or limits it." Also, Article 96 of the same law, which considered the behavior of a young person under the age of seven years to be null and void, as it states: "The actions of a young person The one who is not distinguished is void and if he has permission from his guardian".
[21] See Article 174 of the Iraqi Civil Code, which states: "It is not permissible to charge interest on the suspended interest, and it is not permissible in any case for the total of the interest received by the creditor to be more than the capital, all without prejudice to commercial rules and customs ".
[22] Dr. Suleiman Morcos, a previous source, p. 16- and beyond.

1- The legal rule, since its inception, remains binding and obligatory on all individuals, and this is the origin of the legal rules.

2- The individual's exclusion of one of its two parts does not end the obligation contained therein. Rather, all that is in the matter is that the parties have chosen to apply the legal rule in one of its two branches for the ordering application of them, and it is binding on them.

3- It is not necessary for the legislator to declare the imperative of the legal rule in words, but it can be understood from it that it is commanding from the beginning, as is the case in the rules of criminal or administrative law because it is linked to public order[23].

4- Saying that the original decision-making of legal rules is based on the existence of a verbal criterion in them, unlike the words found in the peremptory rule, as the explicit text is the decisive factor in whether it is peremptory or decided, and forms can be presented that: If there is no explicit text in the rule, and it becomes It is binding and linked to a heavy penalty. Is it commanded or prescribed, and where is the discrimination?

Fourth: If the legal rules are established in a law pertaining to a specific subject, the legal rules of jus cogens, complementary rules and other rules must be linked to it, so there must be a verbal criterion.

When answering this question, it cannot be accepted in many laws, rather it is almost constant in many laws, especially those laws that are related to the common law, as the legislative authority imposes coercion and oppression on individuals, such as criminal, constitutional and administrative law, and even in law Private, such as the Code of Procedure and the Law of Criminal Trials, as it is recognized that all the legal rules of the aforementioned laws have a prescriptive character, and all the legal rules associated with them are peremptory rules, which makes the distinction between the different legal rules non-existent, and at the same time the original prescriptive; This leads to the futility of studying the different legal rules as they are prescriptive, complementary or explanatory, so this criterion with these ideas is not suitable to distinguish between jus cogens and others, in addition to the criticisms leveled at this criterion[24].

Section Two: The Flexible Standard

The jurists did not aid the first criterion (formal or verbal) in distinguishing between jus cogens and other legal rules; There is a clear defect in distinguishing between peremptory rules and other rules, so they invented another criterion, which is more flexible than the formal criterion, which they called the flexible or objective criterion or the so-called public order criterion.

In order to shed light on this criterion and its relevance to legislation, we mention the following:

Referring to the definition of public order, which stated: "It is a set of legal rules related to the higher interests of society, and the direct and indirect legislative policy of the state, which individuals are not allowed to violate and go against its guidance at all."[25], as it appears through this definition that public order is a set of rules Legal rules, whether peremptory or other rules, and whether written or unwritten, can relate to public order, in addition to the definition linking legal rules and the legal penalty resulting from the violation to the public interests of society and the policy of the state in it, but the rules of public order remain independent rules that need In turn, to a criterion set by, if we accept the criterion of public order to distinguish between the different legal rules, then we fall into the forms of the independence of public order[26]. and to clarify this we show the following:

First: With regard to the question of the extent to which peremptory norms are related to public order?
The answer is: that the rules of public order are independent rules that are not related to jus cogens nor complementary rules, assuming that the legal rule is divided into several rules, and this assumption is impossible; By virtue of the ratio in which the legal rules related to public order can be linked with other

[23] Dr. Abbas Ali Salman, Public Order in Personal Status Matters, PhD thesis submitted to the Council of the College of Law, University of Baghdad, 2020, p. 34.
[24]Dr. Said El-Sayed Ali, Foundations and Rules of Administrative Law, The Egyptian Publisher, for Publishing and Distribution 2019, p. 60 - and beyond.
[25] Dr. Abbas Ali Salman, previous source, p. 33.
[26] Dr. Abbas Ali Salman, same source, p. 33.

legal rules, either the ratio is equal or different, or there is a general and specific absolute in terms of concepts, or from a certain aspect.

As for saying the proportion of equality between the concepts of the legal rules mentioned above[27], we have achieved the meaning that the entire legal rules do not fit the differentiation between them, and this is exactly what we are going to, but if we say that there is a discrepancy between the legal rules in the concepts, then the negation of the link between the rules of public order and the rules The jus cogens necessitates the illegality of the criterion, since it is not fit to differentiate between the different legal rules; Because there is a self-distinction between them in the specificity of each rule with its intrinsic and external characteristics and features, and then we do not need a criterion to distinguish between them.

As for saying: there is an absolute general and specificity between peremptory rules and the rules of public order, assuming that all the rules of public order are peremptory rules, and some peremptory rules are rules of public order, and the effect of violating any of them is nullity[28], and this cannot be imagined but rather Think of it at all in the presence of this ratio; By virtue of the fact that peremptory norms and the rules of public order are linked from the very beginning of their inception with the penalty of self-violation whose fate is invalidity, and the flexible criterion establishes invalidity as one of the effects of the breach. be between them; Because speaking about legal rules, a distinction must be made between them in terms of origin and formation, not in terms of effect only.

Second: The link of interest in the content of the legal rule is a characteristic common to all legal rules, and unlike those who say that, he did not provide complete and complete evidence in this regard, as legal rules do not target private interests when they arise.

Third:The adoption of public order as a criterion for distinguishing between peremptory norms and others on the imposition of its acceptance that it is a flexible criterion. The rules related to public order are peremptory norms that may not be violated, according to those who say that it is not permissible to violate the norms of public order and peremptory norms together, unlike the complementary rules that they held that it is permissible to agree on Contrasting it, however, this statement can be excluded through the following:

Assuming that jus cogens are linked to public order only, and public order is distinct and differentiated between it and other legal rules, we see that there are legal rules that are noted at first glance as jus cogens rules that cannot be violated and are related to the issue of public order, and end with results that they are complementary rules, and here no It is supported by the previous two criteria, whether it is formal or flexible, for example, what is stated in Article 171 of the Iraqi Civil Code No. (40) for the year 1951 as amended, as the text of the aforementioned article stated: The debtor's delay in fulfilling it was obliged to pay the creditor, as compensation for the delay, legal interest of four percent in civil matters and five percent in commercial matters.

We note on the aforementioned text that the prescriptive obligation in it to pay the delayed interest and the appearance of the rule here in the appearance of a legal rule made it one of the category of imperative rules that there is no discussion about, but by noting the article that follows it, which is Article (172) of the aforementioned law, it showed that the rule is not related mentioned in Article (171), neither with public order nor with jus cogens, according to the one who says that it is permissible to violate the complementary rules, as its text came in the Iraqi Civil Code No. 40 of 1951 as amended, saying: "The contracting parties may agree on another rate of interest, provided that this price does not exceed 7 If they agree on interest in excess of this price, it must be reduced to 7%, and what was paid in excess of this amount must be returned[29].

It appears from the foregoing that the formal criterion and the flexible criterion are not fit to be two criteria for distinguishing between legal rules and complementary or explanatory rules. Rather, the public system

[27] Dr. Greiger Fengeh, Public Order and Commercial Arbitration, PhD thesis submitted to the University of Algiers (Ben Youssef Khedda) 2017, p. 44.
[28] ghestin jacquse, trate dedroit le formation ducontrat, LGDH, 1993, p 91.
[29] Article (171) of the Iraqi Civil Code corresponds to Article (226) of an Egyptian civil and Article (172) of an Iraqi civil corresponds to Article (227) of an Egyptian civil, as Professor Suleiman Morcos exposed these rules and considered them complementary. Publication of Egyptian Universities, p 71.

itself needs a criterion, as many jurists went to by saying that attaching the higher interest of society to be a criterion for public order[30].

We see the following hypothesis:

1- The legal rules vary according to their claim above.

2- The legal rule cannot be revealing from others and revealing it from others, as is the case in the rules of public order, as according to their interpretation that the public order has become a criterion for distinguishing between peremptory and complementary rules. Revealing public order, this claim is so difficult to the logical impossibility of evidence dependent on other evidence.

3- That there is no legal rule at all, whether it is general order rules, peremptory rules or complementary rules that are not related to the general interest of the legislation; By virtue of its association with the supreme interest of society, otherwise, it destroys the generality of the legal base and at the same time destroys the interest and wisdom of its legislation.

The second demand: Evidence of the legal base unit

When reviewing what legal jurists mentioned in the definitions of the legal rule in general, we conclude as a result of not distinguishing between any kind of rules, and it goes without saying that the research should be concluded with evidence to deny the distinction between peremptory rules and complementary rules, and to prove the unity of the legal rule, through two branches as follows:

Section one: denial of differentiation

A group of jurisprudence holds that peremptory rules seek to achieve a general interest of society without any other rules, in contrast to complementary rules that can achieve a special interest, or a specific interest in a particular group[31].

It is possible to respond to the aforementioned statement, that the interest that wears the rule as commanding or complementary is not scientifically verified and no one who claims this statement has presented its full evidence, since all legal rules when they are formed must be taken into account by the legislator in the public interest of society in them, and for this They said that the legal rule does not target a specific person, and that the general character and abstraction reveal that the legal rule aims to achieve the public interest, regardless of whether it is peremptory, complementary or related to public order, and similar names[32].

Perhaps this illusion of discrimination came as a result of the belief of some legal scholars that the rules of public law are related to the public interest of society[33] , and the result of this saying: that the rules of law in which the state is a party are rules related to public order and may not be violated, while they said that It is the rules of private law that protect the private interest only, and from here it became clear the confusion and confusion in the distinction between the rules of public law and the rules of private law, and it is true that the rules of private law are characterized by generality and abstraction[34] ,and aim to protect the public interest through names that may seem at first glance that they Especially, however, it protects a legitimate public

[30] Dr. Abdul Razzaq Ahmed Al-Sanhoury, Mediator in Explaining Civil Law, Theory of Commitment in General, Sources of Commitment, Volume One, Al-Halabi Human Rights Publications, Lebanon, 2000, p.: 434 435. He stated a definition of public order by saying: “The rules that are intended to achieve a public political, social, or economic interest related to the higher society system, and superior to the interest of individuals, and all individuals must observe and achieve this interest, and they are not allowed to oppose it among themselves until If you achieve individual interests for them, then individual interests do not stand before the public interest".

[31]Dr.Naim Al-Zaher and a group of authors, Tourism Legislation, Al-Yazuri Scientific House, 2018, p. 33.

[32] Dr. Samir Tanago, The General Theory of Law, previous source, p. 89.

[33] Dr. Hassan Kera, Introduction to Law, The General Theory of Right, Mansha’at al-Maaref, Alexandria, 1973, p. 56

[34]Dr. Samir Tanago, previous source, p. 294

interest, such as the protection of the young[35], the cuddled and the insane[36], and the protection of the merchant and bank accounts[37].

If the criterion of interest is the distinguishing factor between the legal rule related to public law and the rules related to private law, the distinction between the two is very difficult, since in many cases it is not possible to find a dividing line between public and private interest, as legal rules in general seek to organize life in Society and this organization seeks to achieve a public interest in society, just as the rules governing marriage and divorce are part of the rules of private law, but they achieve protection for the interest of the family, and this is reflected in society in general[38].

In order to achieve what we mentioned above, the rules of private law, like the rules of public law, are keen to achieve the general interest of society from its beginning and formation, and the best that can be said about that as a living example in the behavior of the young, if the law refers to the types of behavior that the young person performs, Among these behaviors are actions that revolve between benefit and harm. The relative invalidity is decided for the benefit of the youngster, and the latter here is not targeted specifically. The rule then looks at protecting the private interest of the young person with his title as part of the community and bears the concept of the small, which applies to everyone who bears this trait and who catches it like crazy. And the idiot and others, and thus the legal rule works to protect the society represented by the target group above, that is: all the young people of society and those who carry their capacity and rule, and the application of many examples in this field, especially those that are within the scope of private law, in French law, for example, we find that the legislator in The Law of Tenancy Contracts took into account the interest of the tenant, preferring it to the lessor, and made them rules that cannot be agreed upon, although the rent law falls under private law[39].

We note from the foregoing, that the legal rule in the private law appears in the form of special protection, but in fact it achieves a public health, and in support of what was mentioned in this note, as is the case in contracts of compliance and the amendment of the penal clause, and the costly and burdensome obligation is brought back to the point of balance "the principle of contract balance." , these things that were mentioned target the contracting parties, but the legal rule indicates that it targets all the contracting parties whose legal actions are similar to the application of the legal rule, so that the legal rule is general and does not exclude anyone, regardless of his capacity or personality, and with this description its generality and obligation to all persons is evident[40].

As a result of what was mentioned, we hold that all legislation must be based on an interest, even if it is personal, and its result is reversible in its effect for the benefit of society; Because the legal rule is its natural result is the realization of the interests adopted by the society and not the other way around, and this saying applies to the rules called complementing that with its self-obligation and as we will see in the evidence of proof that the legal rule, whether it is complementary or one thing in application.

The second important part in proving the denial of differentiation is the reliance on the well-known and well-known saying that jus cogens legal rules cannot be violated, unlike complementary legal rules that individuals may agree on.

In our estimation, this is contrary to reality and also contrary to the wisdom of legislating the legal rule, as the legal rule of all kinds mentioned above must be obeyed and self-imposed in it the capacity of binding, otherwise the force of binding will be lost, and the technical formulations that were said in the verbal standard are only organizational solutions so that there is no remaining At the same time, the legislator with

[35] Dr. Muhammad Ali Al-Badawi Al-Azhari, The General Theory of Commitment, Part One, Second Edition, Dar Al-Kitab, No Publication Year, p. 141

[36]Dr. Ahmed Salama, Lectures in the Introduction to Legal Sciences: The Theory of Right in Civil Law, International Press 1961, p. 17.

[37] Dr. Ayman Ahmed and Dr. Shehata Al-Dlou', Legal Practices and Practical Training, 1st Edition, Library of Law and Economics, 2019, p. 150.

[38] Legal Adviser Ziad Attah Al-Arja, Assistance in Constitutional Law, Political Organization and the Jordanian Constitution, Amwaj Publishing and Distribution House, Amman, Jordan, 2015, pg. 39

[39] Dr.. Abdul Razzaq Faraj Hassan, Maintenance of the leased property in civil law and rent laws: a comparative study, without a publishing house, 1977, p. 112 and beyond.

[40]Dr. Imad Tariq Abdel-Fattah Al-Bishri, The Idea of Public Order in Theory and Practice: A Comparative Study between Man-made Laws and Islamic Jurisprudence, The Islamic Bureau, 2005, p. 289 and beyond.

this directive guarantees the freedom of individuals to choose the most appropriate for them in applying the legal rule, taking into account the principle of the authority of the will[41].

And we see in freedom of choice here does not mean finding alternative legal rules, that is: agreement contrary to what is stipulated by the law by individuals, but that individuals are obligated to apply the legal rule related to a penalty, and therefore the legal rule is the same in all cases, and that naming the rule being complementary does not It means that new conditions and descriptions of the legal rule were found in it. Rather, it is a legal rule with complete descriptions and conditions from the beginning of its formation.

And that the legal rule upon its emergence is a rule linked to a penalty and complete, according to the premises of the formation of legal rules and their concept, and most of the matter is if the legal rule is appended to the interpretation of the intended meaning or is attached to another legal rule, then what is appended to the legal rule or what is attached to it is a directive detailing the The rule of the basic rule, and that it is one rule, and there is no point in multiplying it; By virtue of the fact that the concept of the legal rule must be formulated according to its general characteristics and conditions, as it is a general, abstract, binding social behavior rule that is linked to a penalty, and the plurality of choice, meaning the two parts, does not deprive it of the concept of the legal base.

And to add to the clarification and in support of what we went to about the unity of the legal base, the latter is not devoid of three things: Either it concludes without branching in directing individuals to a single ruling and choice, then this is not arguable, because its ruling is fixed and the character of the legal base is fixed in it, and it is commanded from the first Its origin, or it is attached to a detailed legal rule of the basic rule subsidiaries from it, and this branched legal rule remains a legal rule with full descriptions and conditions, and the legal rule in this sense has a branching character. It is unique in a ruling and a subject that is different from the original, and as for the subject in it, although it is branched, the branch includes the origin and a certain peculiarity that gives it the advantage of its uniqueness from the original and with this specificity its essence becomes a new essence, rationally and logically.

Or that the legal rule is appended to its ruling by multiple choices, so if it is appended to a single ruling or a choice that suits its subject, it will be one legal rule and by itself it is peremptory for the penalty associated with it.

And if the judgment or choice at the bottom of the legal rule is one in the choice of the parties, then we are before one legal rule whose subject is different and its rule is one fixed, or the judgment is different, then we are faced with two rules with different subject and judgment, and each of them becomes an independent legal rule.

And if the subject is one and the rule in the legal rule is to choose between choosing this or that way, then the legal legislator implicitly interferes with the will of the parties. The least that can be said about this interference is to prevent other options that could be a solution to the problem of the subject, and at the same time directed the parties' will to choose One way to rule, and the parties have to choose it, and they are obligated to choose it by virtue of the legal rule and what it possesses of the capacity of obligation to respect it.

The same case is said if there is another legal rule branching from its origin or interpreting another legal rule, as stated in Article 174 of the amended Iraqi Civil Code No. 40 of 1951, in which it was stated: In any case, the total interest received by the creditor is more than the capital, all without prejudice to the commercial rules and customs.

As we note on the aforementioned article, that the legal rule stated that interest should not be charged more than the capital, but in the appendix of the rule it was allowed to refer to the rules and commercial habits that could lead to interest less or more than what is required.

As for the second type of rules that can be supplemented by another legal rule and the whole becomes one legal rule, as stated in Articles 195 and 196 of the Iraqi Civil Code No. 40 amended for the year 1951, as the text in Article 195 says: "If the value of the usurped decreased after the usurpation, then he is not The usurped may not accept it as it is without prejudice to his right to compensation for other damages, but if

[41]Dr. Muhammad Ahmed Ali Al-Mahasneh, Disputing Laws in Electronic Contracts: Towards Creating a System of Unified Objective Rules: A Comparative Study, Dar Al-Manahil, 2013, p. 90

there is a decrease in the value of the usurped due to the use of the usurper or his action, he is obligated to guarantee." perished, even without counting from the usurper, who is required to guarantee." For more examples, the texts of legal rules in civil law in general can be followed[42].

There is an important note: the legal rule may not contain a specific penalty, so the legal legislator seeks to find the penalty in another legal rule, and the latter is complementary to the first rule in the linguistic and not idiomatic sense, as the penalty is imposed or a case is not mentioned in the first rule, as is the case In enacting laws subsequent to the previous legislative law, and we believe that the previous law and the subsequent law are by virtue of a single legal rule; Because it dealt with the same assumption and the same solution, there is no point in saying that they are two separate rules, most of the matter is that the subsequent law explained or explained what was unclear in the legal rules found in the previous law, and they are thus characterized by the same descriptions and characteristics of the legal rule in its general form, and according to this statement it appeared that there was no Differentiation in the real sense between jus cogens rules and other legal rules with their various names.[43]

Section Two: Proving the Unity of the Legal Base

The formulation of the legal rule is one of the most dangerous tasks that fall on the shoulders of the legislator. By virtue of the fact that the legal rule that will be issued from it must take into account certain aspects and controls, as it is not correct to issue a legal rule regulating individual behavior only, but the legal rule must take into account the social behavior and that the formulation of that behavior be in a specific manner and directed to all those who They fall under it, and at the same time the legal rule cannot be directed to a person in person or to a specific fact, because the facts and people are the ones to whom the legal rules apply, and it is not correct for the rule to be applied to one person only, and that all of what was mentioned is one of the fundamentals of legislative drafting. For the legal rule, and perhaps the best example of this is what was stated in Article 46 first of Civil Law No. 40 of 1951, which says: "1- Every person who has reached the age of majority, enjoying his mental powers and is not seized shall be fully qualified to exercise his civil rights." With a simple observation, we find that this rule It fully applies to all persons in society, whether male or female, to those who enjoy their mental abilities, those who have completed the age of puberty from the age of eighteen, and to all persons present at present and in the future. The person is eligible to exercise his civil rights.

It appears through the analysis of the aforementioned article that the rule is peremptory as it was called, and its command came from the necessity of not violating it in those who lack one of the conditions mentioned in it, and that any action that was in violation of what is stated in it is void[44].

At that time, the legal rule is considered peremptory and fulfills its general conditions, while the complementary rules, as some of them went to the field of their application, are in relation to the private interests of individuals; In order to allow them the freedom to organize their affairs, and this statement in the legal base being complementary is inaccurate and does not reach the legal base in any way; By virtue of the fact that the legal rule from the beginning of its emergence, as we mentioned previously, is peremptory, whether it is complementary or peremptory, and in both cases it is permissive of emergence and survival, and the question arises that: the choice of the parties to the complementary rule is entrusted to them and its violation does not require invalidity[45].

The answer to this question lies in the following answer:

[42]See the text of Article 211 of the amended Iraqi Civil Code No. 40 of 1951, which states: "If a person proves that the damage arose from a foreign cause in which he has no control, such as a heavenly pest, a sudden accident, force majeure, the act of a third party, or the fault of the injured party, he is not bound by the guarantee. Unless there is a text or agreement to the contrary," as well as Article 259 of the same law, in which it was stated: "It is permissible to agree that the debtor shall bear the consequences of the sudden accident and force majeure."

[43] Dr. Abdul-Baqi Al-Bakri and Zuhair Bashir, Introduction to the Study of Law, previous source, p. 43.

[44]Dr.. Haider Adham Abdel Hadi, The Origins of Legal Drafting, Dar Al-Hamid for Publishing and Distribution, Jordan, 1, 2009, p. 22.

[45] Dr. Muhammad Jamal Mutlaq Al-Thneibat, Introduction to the Study of Law, Library of Law and Economics, Riyadh, 2012, p. 110.

First: The legal rule with its various nomenclature continues to have the same origin and obligation, and the effect of the penalty may vary depending on the strength of the subject for which the legal rule was formulated, whether it is civil, criminal, administrative, and the like. We deny it," appended in two parts, and the legislator permits agreement contrary to what is stipulated in one of the two parts, and leaves the other part available. It is a command that individuals are not allowed to violate both sides, but in the first part, he gives them the right to follow a behavior stipulated by the law. As for the second part, the legislator obliged them to follow the second method that he prescribed for them, and all that is in the matter is that individuals have the option to follow the first way or the second way in applying the rule. The legal rule, and this is what is important in the matter, and a difference between the emergence of the rule and its application, and this is what is not disputed when applying one of its two parts, and that the application of the legal rule is late in time from its emergence, hence the confusion and illusion, in naming the original rule A complement and a statement of its concept that individuals may violate its rule, so it was named a complementary rule according to the application later than the moment of emergence, and this designation in our view is wrong, because in both cases if the first part is chosen, it is associated with a penalty and it is not permissible to violate it. This case, too, may not be agreed upon, and is linked to a penalty as well.

Second: If we accept that the complementary legal rule is called complementary to the existence of the verbal criterion or the flexible criterion in how far it relates to the public order, and individuals may follow a ruling that contradicts it. And the effect that it has, and obliges them to follow what was stated in the legal rule in its first part without changing, and the decision of the judiciary here reveals the legal rule that it is necessary to follow the first part and neglect the other part of it, and the judge ruled not to violate that necessity, then he looks at the legal rule from the first letter It has to the end of its first part by virtue of the legal rule of one slit, as if the legislator wanted only its first part, then the judge does not look at the second part of the legal rule, and this is explained by the fact that the complementary legal rule was not a complementary rule, neither in its emergence nor in its application, but rather it is an imperative legal rule The application is obligatory from the start.

Third: If the stakeholders chose the second prong and agreed to implement it and a dispute arose, here we ask the question: What will the judge neglect in the matter of applying the legal rule? Will he resort to the effect and the consequences of the first part or the second part?

The answer is certainly that the judge will neglect the ruling in the first part, rather he will not look at it at all, as if the rule in front of him is only the second part, and he does not care about what the provisions of the first part lead to, so the judge excludes the first part and does not look at it at all. In the second part, and the legal rule is seen as a single legal rule in its second part without the first, and this requires the presence of the legal conditions known in the legal rule of generality, necessity and abstraction, and the judge's decision also reveals its ruling as a single legal rule, then we are in front of a rule One legal in its subject is subject to the concept of the general legal rule, which was defined as a general, abstract, binding rule of social behavior associated with a penalty.

Recommendations and results:

It goes without saying that we conclude with the most important results and recommendations included in the research, which are as follows:

First: the results
1- In the language of legal jurisprudence, it becomes clear to us that the legal rule is divided into peremptory legal rules that cannot be violated at all, and complementary or interpreted legal rules that can be agreed upon.
2- It appeared through this research that the legal rules with the aforementioned division are inaccurate, and that the legal rule from its inception to the suspension of its work by cancellation or amendment remains one legal rules that have a peremptory character, and it is not possible to agree on violating them at all.
3- The unity of the legal rule is based on its definition of being general abstract social behavior rules that are binding on all, and on this basis the idea of the jus cogens legal rule was built, and confusion occurred in dividing it into different legal rules based on its application.
4- We see, according to the evidence mentioned in the research, that all the criteria mentioned by legal scholars, such as the formal or verbal criterion, do not help the legal rules in dividing them into peremptory and complementary rules. Legal rules without exception.

5- Through the research, it was found that the legal rules in emergence and application are but one legal rules that possess all the characteristics of the legal rule of abstraction, generality, public interest and obligation. Therefore, it is not correct for the legal rule to be the property of a legal rule.

Second: Recommendations

1- Those with legal competence should look at the legal rule as a single rule in terms of its origin, application and legal effect.
2- We suggest that any court in question should look at the legal rules at the stage of legal application at one level, regardless of their connection to the issue of the incident (private or public), and the judge should not be affected by the criteria that differentiate between legal rules as peremptory or complementary.
3- In legal and judicial preliminary studies, the division of legal rules into peremptory and complementary ones must be lifted from the curriculum; So that the student does not fall into the illusion of this division, especially if the student follows the judicial curriculum in the future.

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