

LAWXPERTS.

WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS-ORIENTED.

JUS COGENS DEMYSTIFIED

For CLAT, JUDICIAL SERVICES, LAW OPTIONAL

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IUS COGENS :

- *A.K.A* = peremptory norm or absolute rule of general international law.

WHAT IS IUS COGENS ? A norm = accepted + recognised + no derogation permissible + modification allowed by a norm of general international law having the same character. **ART.53 OF VCLT.**

- PRINCIPLES WHICH HAVE ATTAINED = Prohibitions on the use of force (as laid down in the UN Charter and on genocide, slavery and torture.
- BINDING ON NON-PARTIES = X, a state, even though not a party to a treaty on prohibition of Slavery ; Now since the Prohibition of slavery has become Jus cogens - X cannot practice slavery anymore.) WHY ? Simple. Pay attention to definition guys. It is because no derogation permissible from accepted + recognised principles of I.L.
- SCOPE + APPLICABILITY OF IUS COGENS = Expanding, Unclear.
- CRITERIA for identifying IUS COGENS = Everything depends on the particular nature of the subject matter.
- It is **wrong** to assume that all the provisions of human rights treaties = are *jus cogens* or even rules of customary international law.
- Democratic Republic of the Congo v. Rwanda = Where the Court noted that the rights and obligations in the Genocide Convention were rights and obligations *erga omnes* and stated that the prohibition of genocide was 'assuredly' a norm of *jus cogens*.

2 SITUATIONS:

I. TREATY WHICH IS IN VIOLATION OF EXISTING PEREMPTORY NORM :

- *[a] treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognised by the international community of states as a whole as a norm from which no derogation is permitted, and which can be modified only by a subsequent norm of general international law having the same character. ART 53.*
- OK. What happens to the treaty which is violative of IUS COGENS?

IT IS *VOID*. Therefore both the parties of that should eliminate invalid treaty = the possible consequences + bring their mutual relations in conformity in peremptory. **ART 71.**

II. NEW PEREMPTORY NORM EMERGING IN VIOLATION OF TREATY :

'[i]f a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates". ART 64.

You are released from further obligation to perform the treaty =

- *RIGHTS, OBLIGATIONS & SITUATIONS (ROS)* = existing prior to terminate has to be performed ; but as the new P.Norm has emerged = ROS has to be maintained in conformity with P.Norm. **ART.71.**

THE END. MORE ON THE NOTES.