



**مواجهة التضليل (الأخبار الكاذبة) في العصر الرقمي في القانون  
الإنكليزي والقانون العراقي: محاولة لدرح تضليل الرأي العام**

**Facing disinformation (fake news) in the digital  
era in the English common law and Iraqi law: An  
attempt to defeat misleading the public**

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## الملخص

لقد وصلت ظاهرة الأخبار المزيفة التي تسعى إلى تضليل الجمهور إلى مستوى صعب يتطلب المزيد من الاعتبارات لمواجهة هذا العدو الهدام. لقد أثارت أعمال التخريب الأخيرة في المملكة المتحدة بسبب التضليل الإعلامي حول مقتل ثلاث فتيات صغيرات انتباه حكومة المملكة المتحدة لمواجهة هذا التحدي. تسعى هذه الورقة إلى التركيز على هذا المرض الاجتماعي الذي يجب تحديده من منظور قانوني والنظر في كيفية تفاعل القانون مع هذه الظاهرة. يهدف هذا المقال إلى النظر في مصطلح التضليل الإعلامي وما هي الحجج الرئيسية للدفاع عن نشر المعلومات المظلمة وما هي تكاليف هذا النشر من وجهة نظر أكاديمية. كما ويركز هذا البحث حول الوسائل القانونية (الدعوى) التي قد يستخدمها الضحايا للدفاع عن حقوقهم المتضررة وكيف يمكن أن تكون هذه الوسائل فعالة في العصر الرقمي كما ويهدف البحث إلى المقارنة بين القانون الانكليزي والقانون العراقي بشأن تلك الوسائل القانونية في مواجهه التضليل الاعلامي والمعلومات المزيفة.



## Abstract

The phenomenon of fake news that seeks to mislead the public has reached a critical level that requires more considerations to confront this destructive enemy. The recent acts of vandalism in the United Kingdom due to media misinformation about the murder of three young girls have drawn the attention of the United Kingdom government to confront this challenge. This paper seeks to focus on this social disease that must be challenged from a legal perspective and to consider how the law interacts with this phenomenon. This article aims to consider the term media misinformation and what are the main arguments to defend the dissemination of misleading information and what are the costs of this dissemination from an academic point of view. This research also focuses on the legal means (lawsuits) that victims may use to defend their affected rights and how these means can be effective in the digital age. The research also aims to compare English law and Iraqi law regarding these legal means in confronting media misinformation and fake information.

## Introduction

Recently, the United Kingdom has suffered from waves of violence in many cities led by rioters caused by the conspiracy theories and disinformation which triggered Islamophobe in the English society. This calls the UK government to create a security unit to face disinformation via social media in order to regain the sustainable safety and security.

<sup>1</sup>The aims of this paper are to clarify, to some extent, the potential actions that may enable the victim(s) of false allegations largely via online platforms such as social media to protect legally their rights. It seeks to tackle with the question related to what extent the dissemination of



disinformation is illegal. Is it wrong to say false information and should people be sure about the accuracy of their publications? The fact that freedom of expression could be seriously undermined if people could not practically express their ideas may provide an important consideration to the topic of this article. What are the potential consequences if forcing people to say truth and how one could be sure of the accuracy of all information, he/she provides? This article may help to identify the main differences that the claimant may encounter in bringing his/her legal potential actions under English laws. It may spot lights on the main differences that the claimant under Iraqi law will face if compared with the same situation under English law. However, this paper will only focus on civil causes of action of due to limitations of space in this paper.

<sup>2</sup>Falsehoods could have several justifications that could be said under the ambarella of freedom of expression for many scholars. Also, there are many justifications to restrict the spread of falsehoods due to their crucial costs to the society, institutions and individuals. Therefore, the first section will explain the meaning of false information considered from etymological, legal and academic perspectives. The second section will consider the arguments and counterarguments of spreading falsehoods in order to identify the costs and benefits of this phenomenon. The third section will be dedicated to the legal causes of action that could be available to the victims of falsehoods and how they may legally confront the publishers of disinformation that cause losses to the claimant. The last section will elaborate the Iraqi approach regarding the penal responsibility of publications according to Iraqi penal law.



## Section 1 False information on online social networks (disinformation)

Etymologically speaking, false information or alternatively misinformation refers to the action of giving wrong information about something<sup>3</sup> In other words, false information, disinformation and misinformation could have slightly the same meaning related to inaccuracy of the information provided. However, this definition, technically speaking, may differ according to its intent and knowledge content. <sup>4</sup>Based on the author intent, false information may be classified as misinformation when the publication is made without the intent to deceive the audience. It means the author of misinformation wrongly believes in the factual basis of the publication due to his/her misunderstanding, lack of attention or even cognitive biases. <sup>5</sup>On the other hand, disinformation, the second category of intent based false information, is intentionally made in order to deceive the audience or to make an impact on the public opinion in somehow as the spread of disinformation during American presidential election in 2016. <sup>6</sup>

False information, based on the author knowledge, could also be categorized into two types: false information of opinion-based and false information of fact-based. The first category refers to the act of spreading information that lacks any factual ground but it only expresses honestly or dishonestly its author opinion such as the fake reviews of goods where people present their opinions about goods quality on e-commerce websites. Fact-based false information, conversely, implies information which goes wrong with a single-valued ground of factual information. It is mainly made to make the readers believing this disinformation as true information such as fake news. <sup>7</sup>



JAMES H. FETZER provides a detailed explanation of the disinformation that may have five levels of strength implying the intentional distortion of truth. Fetzer argues that disinformation implies the intentional disregard to the truth in order to mislead and deceive the public by a deliberate dissemination of inaccurate and misleading information with the deliberated absence of encountering evidence favoriting the opposite view (special pleading) whereas the idea of information should imply to a certain level the idea of truth or rationality of belief on that truth<sup>8</sup>. This means that disinformation may include the opposite of information in regard of the truth and falsity, while the former implies the falsity or the deliberated belief in it, the latter implied the truth or the rational belief in truth. <sup>9</sup>

False information disseminated in Online Social Networks has been categorized under eight types or forms. <sup>10</sup>However, these forms of disinformation may highly overlap to the extent that one of them could fall within other types. Fabricated information that is completely fictional and has entirely no connection to the real world whereas the propaganda information seeks to harm the interest of the adversary political parties by disseminating fabricated information that may change the political pathway of a party or the history of a country, a nation or the whole humanity. Conspiracy Theories, as third category, refers to the stories of illegal behaviors carried out by politicians or powerful individuals that involve a conspiracy without proof. Hoaxes mean the stories imply inaccurate facts but produced as legitimate facts or known as half-truth such as the stories around the death of well-known people. The fourth type is the biased or one-sided information which is also known as Hyperpartisan news seeking the sake of a specific person, even or political party by disseminating biased false information. Rumors are a



type of false information that involve an ambiguity in regard of their truthfulness or its confirmation was in question. There is also the Clickbait or yellow journalism that deliberately use misleading headlines or descriptors in order to increase their popularity or traffic for profit. Finally, Satire News which disclose information of satiric nature and contain a lot of irony and humor.

Recently, the term of fake or false news has been interchangeably used to indicate a variety of types of disinformation such as hoaxes, propaganda, clickbait and go on. Fake news usually employed for political purpose, if compared with traditional news, misses the organizational process in producing such information that largely and legally provide the readers confidence about their truthfulness.<sup>11</sup>The difference between the fake news and real news could not be limited to the truthfulness or falsehood of the information, but it relates to the professional process, intent, and editorial norms that seek to ensure the truthfulness and credibility of the information.<sup>12</sup>It might be useful to mention that new terms beside fake news have been used to express the idea of disinformation, misinformation and misleading information such as information disorder and junk news.<sup>13</sup>

The democracies, regardless their origins and directions, could suffer from the growing mainstream of disinformation and its irrefutable consequences on the public opinion incredibly changed via online social networks.<sup>14</sup>However, freedom of expression right may guarantee, from legal perspective, the right to express, to receive and to impart information irrespective whether this information should be true or otherwise.<sup>15</sup>In other words, false statements linked to the speaker's good faith might be protected under the right to freedom of expression not as a matter of principle; but with merely instrumental grounds because



protecting only true statements might make intolerable self-censorship and excessive deterrence on the exercise of this freedom.<sup>16</sup>

This means that information in the marketplace may have crucial importance regardless of its falsity or truthfulness; and misinformation could imply a breathing space that deemed essential to promote freedom of expression besides the values of dignity, privacy, truth, autonomy, personal development, tolerance, equality and respect.<sup>17</sup> Nonetheless, disinformation may have other consequences which could be undesirable from political, social and economic perspectives. In other words, fake news could not be free costs; these costs would be endured by the whole society, institutions and individuals. The next section will elaborate these costs and explain how disinformation process could be heavily expensive.

## **Section 2: The benefits and costs of digital disinformation**

In this section, the arguments and counterarguments of disinformation will be discussed to underline the benefits and costs of disinformation in the digital era. The falsehood by itself may not be a strong basis to bring a legal action if no harm had been produced or caused by the dissemination of falsehoods. In other words, the mere falsity of the information in question must not be a legal cause to bring action if the publication does not harm a protected interest. Scholars defend the dissemination of falsehoods that causes no harms to a protected interest by the following reasons. Firstly, censoring or punishing the disinformation could end up suppressing the dissemination of true information simply because the governmental decisions towards the falsity of information could be fallible.<sup>18</sup> This means that it might be hard



to decide such information is false due to the Official Fallibility. If the government has to decide whether the information is true or false, their decisions might be self-serving, wrong, foolish or even ignorant. Moreover, restricting free speech protection only on true information would necessarily restrict the dissemination of true information itself because people would induce self-silencing instead of facing criminal or civil proceedings due to the disinformation.<sup>19</sup> People will simply speak if they are certain of the truthfulness of what they say; this would eventually make a chilling effect on freedom of expression exercise.

In addition, disinformation may help to spread the truth because people would learn where is the truth and they would discover the truth when the falsehoods are not censored.<sup>20</sup> This means that information marketplace should not exclusively be available for true information because the falsehoods would probably incentivize people to discover the truth by analyzing the arguments and counterarguments. Furthermore, it is reported that falsehoods may help to let people know what, how and why do others hold such falsehoods and let these people know their views are wrong. The censorship of falsehoods may produce the pluralistic ignorance caused by the ignorance of others point of view.<sup>21</sup> Finally, the prohibition of falsehoods might provide undesirable consequences because it might incentivize people to believe in what is forbidden.<sup>22</sup> People may reduce the power of falsehoods and may face them with the counterarguments once they have the possibility to read whereas such an opportunity is dismissed in case of the falsehood's censorship.

The reliability of information on social media, however, becomes a subject of skepticism due to the dramatic and speedy dissemination of false online information and how it is hard to distinguish which information is accurate or inaccurate.<sup>23</sup> The first main cost of fake news



phenomenon is the loss of public trust in news institutions such as newspapers, magazines and TV operators since fake news creators simply manipulate readers to make them believing the truthfulness of disinformation; it is not a technological process but rather it is a psychological one.<sup>24</sup>

The absence of appropriate measures to face the fake news will not only decrease the public trust in the press and newspapers industry; but it may also incentivize the receivers (readers) to make confidence in fake news itself. <sup>25</sup>In addition, the creation of fake news might be an attractive activity among young people suffering from unemployment crisis; this attractive economic option may make an incentive to recruit more people in the fake news process especially with the fact that the number of social media customers is incredibly increasing nowadays.

Economically speaking, the fact that fake news is relatively costless or cheaper than real news may have negative effects on the media firms that produce news because not only costumers are undesired to pay for fake news; but producing real news will be much higher than producing fake news in addition to it debunking. In other words, the cost effect of producing real news would make a chilling effect on the media industry if compared with producing fake news; this would definitely end in social welfare-reducing.<sup>26</sup>

Vian and McStay identified three social and democratic problems (costs) that may be caused by the dissemination of fake news. <sup>27</sup>Disinformation may wrongly inform citizens about what is vital to make the democratic system effective and reliable. The fake news appeared in regard of American presidential election 2016 has been taken as an example of how such disinformation may contrary the constitutional right to be informed. Furthermore, the flow of false information would probably and



continuously keep the citizens wrongly informed because of the cognitive and self-reinforcing algorithmic systems.

This cost may become more complicated with the fact of the difficulty to recognize the fake news from real news. In addition, fake news may have an affective form to mislead the audience in a very dramatic way to urge them to take an inappropriate democratic decision. This means how disinformation may play a significant role of political manipulation in the digital era. Fake news may also undermine the main purpose of social media at the first instance because it may restrict to large extent the social interactions and communications regarding political, social, economic and scientific affairs. <sup>28</sup>Interestingly, disinformation may highly tarnish the institutional (commercial) or personal reputation of companies or individuals.

The increasing spread of false information on social media has been considered the most serious mean to undermine the commercial reputation in the digital marketplace because the cost of debunking fake news might increase the global costs of goods and undermine significantly the rules of competition. <sup>29</sup>

Ari Ezra Waldman has elaborated the social harms of disinformation. <sup>30</sup>It is said that fake news would significantly harm the public to know what is crucial to decide to whom they might vote in elections because of the dressing up of falsehoods over truthfulness. Moreover, fake news may undermine the public debate itself because of equal treatments that the journalist should dedicate to all information by the name of neutrality or professional journalism. Fake news, furthermore, may reduce the reliability in the professional media and can also mitigate the impact of true information in the marketplace of information. Finally, and most importantly, disinformation may destroy the social solidarity in the



society, reinforce the political polarization and increase dividedness simply because the public, psychosocially speaking, is largely keen to accept information confirming their assumptions or prejudices.

The list of these challenges is unexhausted and may include many costs from other perspectives such as the medical, environmental, educational, scientific, and human sights. Facing these challenges has been taken into account by the scholars and institutions to reduce the negative effects of fake news. The technology has been seen as the main technic to fight disinformation phenomena by the creation and developing of new platforms that undermine this challenge such as check-fact, Adblock Plus, Bad News, Digital Polarization Initiative and so on. Nevertheless, the dissemination of fake news could basically harm legal interests protected by law such as private life, reputation, confidentiality, mental health and economic interests. There are, therefore, legal requirements for each action that the claimant must fulfill in order to protect her/his legal interest. Some of these requirements could be classified as high thresholds since the competing fundamental interest of freedom of expression would be challenged by these actions. There are many causes of action that the claimant might rely on to defend and repair his/her violated interest(s).

### **Section 3: The causes of action defeating disinformation**

English law recognizes several causes of action that may enable the claimant (victim) to defend his/her protected interests damaged by the dissemination of false information. Each cause of action has its own requirements, thresholds and tests that the claimant has to satisfy in order to obtain the legal remedies offered to repair the damaged interests. This section will briefly identify these causes of action in order to outline in the



conclusion how Iraqi law may benefit from such actions and it protects their protected interests.

### **First: Defamation**

Defamation is defined as a civil wrong consists of the dissemination of falsehoods that leads or has a tendency to reduce the claimant's estimation or reputation in the eyes of right-thinking person in society.<sup>31</sup> The statement, in order to be actionable, must be defamatory, refer to the claimant and be published.<sup>32</sup> The principle aim of this cause of action is to repair the reputation tarnished by the falsehoods wrongly and unjustifiably disseminated.<sup>33</sup> The main requirement, that the claimant has to satisfy in this action, relates to the publication of defamatory statements that damage or has tendency to seriously damage the interest of reputation.<sup>34</sup> The claimant has not to prove the falsity of the defamatory statements because the law presumes it once the claimant proves its defamatory meaning; in addition, the law presumes the malice of the publisher unless the defendant proves the absence of this malice by one of the anti-malice defences.<sup>35</sup> To establish the defamatory meaning of the statements, English law provides the claimants several tests in this regard. If the statements expose the claimant to 'hatred, contempt, or ridicule', they are considered to have defamatory meaning once they meet the threshold of seriousness. They could have defamatory meaning if they lead the claimant to be shunned or avoided; or if they adversely undermine the claimant's estimation in the estimation of reasonable people.<sup>36</sup> In regard of the defamation and contrary to English law, Iraqi penal law decided in the article 433 that (Slander is the attribution of a specific incident to another person through one of the public means, which, if true, would lead to the punishment of the person to whom it is attributed or his contempt among his countrymen.



## Second: Misuse of private information

This cause of action may provide the victim of disinformation an alternative action if the false statements were private or personal. The publication of false private information may make a legal basis for the claimant to bring an action to defend his/her protected interest.<sup>37</sup> The falsehoods concerning the claimant's privacy, home, surveillance, correspondence or body may trigger the legal liability of the publisher the claimant satisfy the test of reasonable expectation of privacy. If so the claimant must satisfy the proportionality test. This means that the court must decide if the balance should strike with privacy interest or the freedom of expression as both rights have equal weight and value. The court would do so by identifying the public interest which either endorses the disclosure of the information or keeping it private. It has been previously decided that no public interest could be identified if the information was false because the falsity may lead to mislead the public<sup>38</sup> Whereas the article 438 of Iraqi penal law decided that (Shall be punished by imprisonment for a period not exceeding one year and a fine not exceeding one hundred dinars or by one of these two penalties: 1 - Whoever publishes by any means of publicity news, pictures or comments related to the secrets of the private or family life of individuals, even if they are true, if their publication is likely to offend them. 2 - Whoever, other than those mentioned in Article 328, reads a letter, telegram or telephone call and discloses it to someone other than the person to whom it was addressed, if that is likely to cause harm to someone).



### **Third: Malicious falsehood**

This tort is mainly protecting economic interests damaged by the dissemination of falsehoods. It is also called trade libel or injurious falsehood which has two subsets: slander of title and slander of goods.<sup>39</sup>The defendant may be liable for malicious falsehood tort if he/she maliciously publishes false statements about the claimant's property or business to third parties once special damage has been (or likely) caused. The claimant, in opposition to defamation tort, must prove the falsehood of the statements in question and the defendant knows that he/she convey falsehoods to third parties. The special damage in this context refers to the pecuniary damage because this tort, malicious falsehood, is not actionable per se as the case in defamation law. In other words, mental distress or feeling losses cannot be compensated under this tort because it basically protects the claimant's economic interest. Iraqi law, contrary to English law, has no such a similar cause of action and this would be an excellent opportunity to legal researcher to make a comparison in this regard.

### **Fourth: Negligence tort**

This tort may provide the claimant (victim of falsehoods) a legal basis to bring action in order to repair the damages caused by the disinformation. The claimant may use this cause of action if he/she satisfy the following requirements: there should be a legal duty of care upon the defendant; breaching this duty of care by failing to take the reasonable care imposed by law; the claimant's damage must be caused by the defendant's breach of duty of care; and finally, the damage caused by the defamation's carelessness must not be too remote.<sup>40</sup>The House of Lords decided in



Spring v Guardian Assurance Plc that negligence tort could be an alternative cause of action next to defamation since the claimant could establish the connection between his damage to reputation and the carelessness of the defendant.<sup>41</sup> Iraqi civil law may also provide the victim a civil relief for losses caused by the disinformation in case of the connection between the falsehoods and damages caused according to article 204 of Iraqi civil law number 40 in 1951. This means that the tort of negligence in Iraqi law is similar to English law to provide the victim of falsehoods to get legal relief.

### **Fifth: Passing Off**

This cause of action enables the victim of misrepresentations to his goods for obtaining pecuniary damages to his/her losses caused by unjustifiable misrepresentations.<sup>42</sup> Such an action seeks to protect the commercial brands and merchandises from the disinformation created by other competitors in the market. This tort is related to the unfair competition since the defendant seeks to deceive the public about his/her goods to be taken as the claimant's goods in order to get financial advantage from the latter's good reputation or goodwill.<sup>43</sup> Such action is based on the misrepresentations or lies that the defendant had published or disseminated to create confusion or misrepresentation regarding the origin of the goods in question.

### **Section 4: Iraqi legal approach regarding crimes of publications**

The Iraqi constitution guarantees freedom of expression through all means, as stated in Article (38), which reads: "The state guarantees, without



infringing upon public order and morality: First: Freedom of expression by all means. Second: Freedom of the press, printing, advertising, media, and publishing." This provision aligns with the philosophy of change that Iraq witnessed following the fall of the authoritarian and dictatorial regime that suppressed freedoms and rights, viewing opposing opinions and ideas as severe crimes warranting the harshest punishments. This regime turned Iraq into an empire of prisons and mass graves. After the constitution was ratified by the people for the first time in a large public referendum on October 15, 2005, one of its most significant features was the sanctification of rights and freedoms. Any infringement or suppression of these rights is considered a crime, with the violator subject to legal accountability. Freedom of expression is one of the most critical freedoms addressed by the constitution, along with freedom of thought, conscience, and belief, as stated in Article (42).

Opinions resulting from thought that is constitutionally and legally protected may be publicly expressed, with "publicity" meaning making the disclosed matter accessible to the public or those present when it is announced. The Penal Code mentions the means of publicity in Article (3/19), which includes the press and other publications among the means of publicity. However, freedom of expression and thought is not absolute; it is defined within the limits of legal protection. If it goes beyond this protection and constitutes a crime, criminal liability is imposed on the publisher or the printed material under the provisions of Articles (81, 82, 83, 84) of the amended Iraqi Penal Code No. 111 of 1969. These articles indicate that publication crimes vary depending on the nature of the medium, whether in a newspaper or another printed or broadcast form. Article (81) of the Penal Code specifies that the editor-in-chief or section editor is responsible for any crime committed through the newspaper,



given certain conditions: publication in the newspaper, the material published constituting a crime, and the responsibility falling on the editor-in-chief or section editor if no editor-in-chief is present. For liability to be established, three conditions must be met:<sup>44</sup>

This is reflected in Article (1) of the amended Iraqi Penal Code No. 111 of 1969, in its first chapter under the heading "Legality of Crime and Punishment," known in criminal jurisprudence as the principle of "legality." It states: "No punishment for an act or omission shall be imposed except based on a law that criminalized it at the time of its commission. Nor shall penalties or preventive measures not stipulated by law be imposed." Therefore, publishing in a newspaper is considered a crime if the law explicitly deems the act criminal. Not all publications in a newspaper constitute a crime, nor does it automatically establish liability for the editor-in-chief or the section editor where the publication occurred. This is specified in Article (81) of the Iraqi Penal Code, which considers the editor-in-chief the principal perpetrator of any crime committed through their newspaper. The determination of whether the act constitutes a crime after publication is the responsibility of the competent court handling the dispute. The court may seek expert opinion to assess whether the publication constitutes a punishable offense if it deems such judicial measures necessary.

Journalism, as is well-known, is the "fourth authority" and the voice of public opinion. The journalist's freedom to publish is guaranteed by the constitution and applicable laws, but it is a responsible freedom bound by professional standards. The seriousness of the publication may vary; the act (crime) could be a felony, misdemeanor, or even an infraction, according to the criminal classification of offenses based on their severity, as stipulated in Article (23) of the Penal Code. Each criminal act is subject



to a prescribed punishment, which the competent judge determines and assesses according to legal standards and judicial procedures when issuing a verdict. Given the importance of journalism and the responsible exercise of the right to publish, as well as Iraq's relatively new democratic experience and the desire to allow this freedom to flourish, the Iraqi Supreme Judicial Council has established a specialized court to handle publication-related cases. This court consists of judges with specialized knowledge and judicial experience, as outlined in the reasons for its establishment.

Article 2 of the Press Law states: "Every periodical must have an owner and a responsible editor-in-chief." Article 3 outlines the qualifications required for the editor-in-chief, as well as for the owner of the publication, who may be an institution or an association, and specifies the relevant conditions. The law also prohibits the editor-in-chief from being responsible for more than one political periodical at the same time (Article 3, Paragraph E). However, the editor-in-chief can combine the role of owner and editor-in-chief, provided that the legal conditions are met. Therefore, according to Article 81, the editor-in-chief is responsible for any offense related to the publication in the newspaper or periodical they manage. In the absence of an editor-in-chief, such as during travel, leave, or detention, the responsibility falls on the section editor where the publication took place, subject to the details of the case presented before the court. Once the editor-in-chief's liability is established, any further responsibilities for the publication are waived, as would be the case if the section editor responsible for the publication is held liable. Consequently, other employees, clerks, and editors from sections where the publication did not occur are not held responsible for what is published in the newspaper they work for. An important question arises: what is the liability



of the actual publisher of the article, investigative report, or any other type of publication in the newspaper, such as a photo or comment, compared to the responsibility of the editor-in-chief and the section editor where the publication occurred?

The answer is that the publisher's liability is established first, as they are considered the primary perpetrator. The editor-in-chief and the section editor share responsibility with the publisher as co-perpetrators. Article 47 of the Penal Code, under the title "Criminal Participation" in Chapter 5, states: "A person is considered a perpetrator of a crime if they commit it alone or with others." Article 81 of the Penal Code adds: "(...) without prejudice to the criminal liability of the author of the book or the creator of the drawing, or other forms of expression, the editor-in-chief of the newspaper is punished as the perpetrator of the crime." This means that the editor-in-chief, section editor, and actual publisher all share equal responsibility, as the law considers each a primary perpetrator of the crime committed through publication.

When the case is presented to the court, the court must document the published material, drawings, and writings in written records before issuing a ruling. This is an investigative measure as part of the case proceedings, and it may be carried out by the investigating judge, the court, or at the request of the public prosecution. Upon conviction, the court may order the confiscation of the materials in question, based on Article 308 of the amended Criminal Procedure Code No. 23 of 1971, and according to legal procedures. The court may also order the publication of the ruling or a summary of it in one or two newspapers at the expense of the convicted party. If the court decides to publish the ruling in the same newspaper where the crime occurred, the newspaper's responsible party must publish it in the same location and space within the deadline specified by the court.



Failure to do so may result in the editor-in-chief and the section editor being fined at the court's discretion and in accordance with the law. If the crime is a felony, the court must additionally order the suspension of the newspaper for a period not exceeding three months, based on Article 84 of the Penal Code.

If the publications, printed materials, and posters were created and distributed within Iraq, and the publisher is unknown, liability falls on the printer. If the printer cannot be identified, responsibility shifts to the seller, distributor, or poster. However, for liability to be established, they must have knowledge of the content of the writing, drawing, or image. If they are unaware, the printer, seller, distributor, and poster are not held liable. In cases where the act constitutes a felony or misdemeanor, the investigating judge, the court, or the public prosecution may, before issuing a verdict, seize the writings, drawings, images, and other forms of expression used. Upon conviction, the court may order the confiscation of the seized items and also mandate the publication of the judgment or its summary in two local newspapers at the expense of the convicted party.

It is worth noting that after the fall of the regime, the Administrative Director of the Coalition Provisional Authority (CPA) suspended the enforcement of certain penal provisions. He also ordered that no criminal case be initiated for several crimes, including those related to Articles 81-84, without written authorization from the CPA Director. This was based on Section 2/2(A) of the CPA Director's Order. Additionally, the CPA Director issued Order No. 14, which addressed prohibited media activities, promoting the emergence of free and independent media, and ensuring the accurate dissemination of information to the Iraqi people. It also prohibited the misuse of media to incite violence. Section 5 of the order outlined penalties for media organization officials, including detention and arrest if



they were found broadcasting or publishing prohibited content, and prosecuting them, with sentences of up to one year in prison and fines up to \$1,000. Section 5(2) authorized the CPA Administrative Director to revoke the license of any media organization he deemed, at his discretion, to have violated the order. He was also empowered to halt their operations, confiscate their assets, and close their offices.

Today, the media industry is in dire need of a functioning system that delineates the boundaries of freedom within which it operates, shielding it from legal repercussions and providing sufficient safeguards. The current legislation governing the media is either outdated, having been enacted during the previous regime, or was legislated during the tenure of the CPA's Administrative Director, designed to address specific circumstances. Although an independent Media and Communications Commission has been established, there remains a need for legislation that recognizes the importance of the media (the "fourth estate") as a vital pillar in building Iraq's democratic system and legal constitutional state, where public opinion—expressed through media, images, and words—serves as the most important watchdog. This should be achieved while respecting the rights and freedoms of others, as guaranteed by the Iraqi Constitution.

### **Conclusion remarks**

Based on what has been demonstrated in the previous sections, it could be said that English law provides the victim of disinformation several causes of action that may help to correct the wrong distributions of rights that caused by the unlawful misconduct of the defendant. However, English law considers the disinformation as a civil wrong whereas Iraqi law, prima facia, considers the dissemination of falsehoods private or defamatory as cranial wrongs that could trigger the penal liability of the defendant. In



regard of the defamation, Iraqi penal law decided in the article 433 that (Slander is the attribution of a specific incident to another person through one of the public means, which, if true, would lead to the punishment of the person to whom it is attributed or his contempt among his countrymen. Whereas the article 438 decided that (Shall be punished by imprisonment for a period not exceeding one year and a fine not exceeding one hundred dinars or by one of these two penalties: 1 - Whoever publishes by any means of publicity news, pictures or comments related to the secrets of the private or family life of individuals, even if they are true, if their publication is likely to offend them. 2 - Whoever, other than those mentioned in Article 328, reads a letter, telegram or telephone call and discloses it to someone other than the person to whom it was addressed, if that is likely to cause harm to someone). This means that Iraqi law, contrary to English law, considers the criminal aspect of these wrongs should be taken into account at the first place in addition to the civil aspect of reclaiming pecuniary damages for the losses caused by such wrongs. Moreover, Iraqi civil law may also provide the victim a civil relief for losses caused by the disinformation in case of the connection between the falsehoods and damages caused according to article 204 of Iraqi civil law number 40 in 1951. This means that the tort of negligence in Iraqi law is similar to English law to provide the victim of falsehoods to get legal relief. Iraqi law may pay attention to the causes of action in malicious falsehood and passing off torts that may provide the legislative authority and legal researchers new perspectives to defeat the falsehoods. There might be a need to consider the international misleading via social media as a criminal wrong due to its deconstructive effect on society as a whole and on individuals. It might be the time to redefine the freedom of expression and



recognize new borders that must not be crossed when this right is in practice.

## References

- <sup>1</sup>Allison George, (2024) 'How to spot fake accounts: Misinformation amid UK riots' <https://ukdefencejournal.org.uk/how-to-spot-fake-accounts-misinformation-amid-uk-riots/>
- <sup>2</sup> The claimant may have more actions such as defamation, privacy (misuse of private information) breach of confidence and false light tort that may protect the claimant rights see section 3 of this article.
- <sup>3</sup> Oxford learners dictionary <https://www.oxfordlearnersdictionaries.com/>
- <sup>4</sup> Kumar, Srijan and Shah, Neil. (2018) 'False Information on Web and Social Media: A Survey. 1, 1 35 <https://doi.org/10.1145/nnnnnnn.nnnnnnn>
- <sup>5</sup> Nir, Kshetri, and Voas, Jeffrey. (2017) "The economics of "fake news"." IT Professional 19, no. 6 pp. 8-12.
- <sup>6</sup> Ghanem, B. Rosso, P. and Rangel, F. (2020) "An emotional analysis of false information in social media and news articles," ACM Trans. Internet Technol., vol. 20, no. 2, pp. 1-18
- <sup>7</sup> Srijan Kumar and Neil Shah. P. 5
- <sup>8</sup> FETZER, JAMES H. (2018) Disinformation: The Use of False Information' Minds and Machines 14: 231-240,
- <sup>9</sup> Coe, P. (2023). 'Tackling online false information in the United Kingdom: The Online Safety Act 2023 and its disconnection from free speech law and theory' . Journal of Media Law, 15(2), 213-242.
- <sup>10</sup> Zannettou, S. Sirivianos, M. Blackburn, J. and Kourtellis, N. (2019) The web of false information: Rumors, fake news, hoaxes, clickbait, and various other shenanigans , Journal of Data and Information Quality (JDIQ), 11 (3) pp. 1-37
- <sup>11</sup> Francesco, Pierri, and Ceri, Stefano. (2019) "False news on social media: a data-driven survey." ACM Sigmod Record 48, no. 2 pp. 18-27.



<sup>12</sup> Lazer, David MJ, Matthew A. Baum, Yochai Benkler, Adam J. Berinsky, Kelly M. Greenhill, Filippo Menczer, Miriam J. Metzger et al. (2018) "The science of fake news." Science 359, no. 6380 pp. 1094-1096.

<sup>13</sup> Himma-Kadakas, Marju, and Indrek Ojamets.(2022) "Debunking false information: investigating journalists' fact-checking skills." Digital journalism 10,no.5:866-887.

<https://www.tandfonline.com/doi/pdf/10.1080/21670811.2022.2043173>

Francesco, Pierri, and Ceri, Stefano. (2019) "False news on social media: a data-driven survey." ACM Sigmod Record 48, no. 2 pp. 22

<sup>14</sup> Bennett, W. Lance, and Steven Livingston.(2018) "The disinformation order: Disruptive communication and the decline of democratic institutions." European journal of communication 33, no. 2 pp. 122-139.

<sup>15</sup> Article 10 of European convention of human rights 1951 states that (Everyone has the right to freedom of expression and to receive and impart information. This right also covers the freedom of the press. Freedom of expression is one of the essential foundations of a democratic society. The media require particular protection because they play a key role in defending freedom of expression. Article 10 protects, among others, the right to criticise, to make assumptions or value judgments and the right to have opinions. Such protection is not restricted to "true" statements; it applies in particular to political speech and debate on questions of public interest. Freedom of expression plays a key role in elections. Artistic expression is also protected by Article 10.)

<sup>16</sup> Wright, R. George. (2011) "Lying and freedom of speech." Utah L. Rev. pp.1131. <https://scholarworks.indianapolis.iu.edu/server/api/core/bitstreams/b53c6996-8003-409e-a02b-944747ddd415/content>

<sup>17</sup> Wright, R. George. N. (16)

<sup>18</sup> Sunstein, Cass R. (2019) "Falsehoods and the First Amendment." Harv. JL & Tech. 33 pp. 387.

<sup>19</sup> EYAL ZAMIR (2014) LAW, PSYCHOLOGY, AND MORALITY: THE ROLE OF LOSS AVERSION 15

<sup>20</sup> Sunstein, Cass R. N. (18)

<sup>21</sup> Sunstein, Cass R. N. (18)



- <sup>22</sup> Joanna Plucinska, (2018) Hate Speech Thrives Underground, POLITICO [<https://perma.cc/FK9N-ED7Z>]
- <sup>23</sup> Figueira, Álvaro, and Luciana Oliveira. (2017) "The current state of fake news: challenges and opportunities." *Procedia computer science* 121 pp. 817-825.
- <sup>24</sup> Kshetri, Nir, and Jeffrey Voas. (2017) "The economics of "fake news"." *IT Professional* 19, no. 6 pp. 8-12.
- <sup>25</sup> Kshetri, Nir, and Jeffrey Voas. N. (24).
- <sup>26</sup> Long, Ngo Van, Martin Richardson, and Frank Stähler. (2019) "Media, fake news, and debunking" *Economic record* 95, no. 310 pp. 312-324.
- <sup>27</sup> Bakir, Vian, and Andrew McStay. (2018) "Fake news and the economy of emotions: Problems, causes, solutions." *Digital journalism* 6, no. 2 pp. 154-175.
- <sup>28</sup> Olan, Femi, Uchitha Jayawickrama, Emmanuel Ogiemwonyi Arakpogun, Jana Suklan, and Shaofeng Liu. (2024) "Fake news on social media: the impact on society." *Information Systems Frontiers* 26, no. 2 pp. 443-458.
- <sup>29</sup> Rodríguez-Fernández, Leticia. (2019) "Disinformation and organisational communication: A study of the impact of fake news." *Revista Latina de Comunicación Social* 74 pp. 1714-1728.
- <sup>30</sup> Waldman, Ari Ezra. (2017) "The marketplace of fake news." *U. Pa. J. Const. L.* 20 pp. 845.
- <sup>31</sup> Descheemaeker, Eric (2015) 'Mapping Defamation Defences', *Modern Law Review*, vol. 78, no. 4, pp. 641-671.
- <sup>32</sup> Ordu, Ayten. (2023) "In the English Modern Age: Examples of Damage to Reputation on the Internet under the Torts of Defamation and Misuse of Private Information." *Erciyes Üniversitesi Hukuk Fakültesi Dergisi* 18, no. 1 pp. 113-137.
- <sup>33</sup> Richard Parkes and Godwin Busuttil, *Gatley on libel and slander* (2022) Sweet and Maxwell, London.
- <sup>34</sup> English Defamation Act 2013
- <sup>35</sup> Richard Parkes and Godwin Busuttil N. (33)
- <sup>36</sup> Richard Parkes and Godwin Busuttil N. (33)
- <sup>37</sup> Richard Parkes and Godwin Busuttil N. (33)
- <sup>38</sup> Ben Gallop, Lily Walker, and Daniel Bishop, *Privacy law—misuse of private information* <https://www.5rb.com/wp-content/uploads/2021/09/Privacy-law%E2%80%94misuse-of-private-information.pdf>



<sup>39</sup> Richard Parkes and Godwin Busuttil N. (33)

<sup>40</sup> Richard Parkes and Godwin Busuttil N. (33)

<sup>41</sup> All Answers ltd, 'Spring v Guardian Assurance plc - 1994' (Lawteacher.net, August(2024)<<https://www.lawteacher.net/cases/spring-v-guardian-assurance.php?vref=1>> accessed 4 August 2024

<sup>42</sup> Ng, Catherine W. (2016) "The law of passing off—goodwill beyond goods." IIC-International Review of Intellectual Property and Competition Law 47, no. 7 pp. 817-842.

<sup>43</sup> Richard Parkes and Godwin Busuttil N. (33)

<sup>44</sup> The material must be published in a newspaper, as defined by the Printing and Publishing Law No. 206 of 1968, Article (1/3), which considers any regularly published material, regardless of its political, social, cultural, or professional nature, a newspaper. 2. The publication must constitute a crime, as no crime or punishment exists without legal provision, per Article (19/Second) of the Iraqi constitution. The following is stated: "No crime and no punishment shall exist without a legal provision, and no punishment shall be imposed except for an act that the law considered a crime at the time of its commission. Nor shall a more severe punishment be applied than that which was in effect at the time of the crime."



## List of References

1. All Answers Ltd. (2024). Spring v Guardian Assurance plc - 1994. Lawteacher.net. <https://www.lawteacher.net/cases/spring-v-guardian-assurance.php?vref=1>
2. Allison, G. (2024). How to spot fake accounts: Misinformation amid UK riots. UK Defence Journal. <https://ukdefencejournal.org.uk/how-to-spot-fake-accounts-misinformation-amid-uk-riots/>
3. Bakir, V., & McStay, A. (2018). Fake news and the economy of emotions: Problems, causes, solutions. *Digital Journalism*, 6(2), 154–175.
4. Bennett, W. L., & Livingston, S. (2018). The disinformation order: Disruptive communication and the decline of democratic institutions. *European Journal of Communication*, 33(2), 122–139.
5. Coe, P. (2023). Tackling online false information in the UK: The Online Safety Act 2023. *Journal of Media Law*, 15(2), 213–242.
6. Descheemaeker, E. (2015). Mapping defamation defences. *Modern Law Review*, 78(4), 641–671.
7. Fetzer, J. H. (2004). Disinformation: The use of false information. *Minds and Machines*, 14, 231–240.
8. Figueira, Á., & Oliveira, L. (2017). The current state of fake news. *Procedia Computer Science*, 121, 817–825.
9. Ghanem, B., Rosso, P., & Rangel, F. (2020). An emotional analysis of false information. *ACM Transactions on Internet Technology*, 20(2), 1–18.
10. Himma-Kadakas, M., & Ojamets, I. (2022). Debunking false information. *Digital Journalism*, 10(5), 866–887.



11. Kshetri, N., & Voas, J. (2017). The economics of “fake news.” IT Professional, 19(6), 8–12.
12. Kumar, S., & Shah, N. (2018). False information on web and social media: A survey. ACM.
13. Lazer, D. M. J., et al. (2018). The science of fake news. Science, 359(6380), 1094–1096.
14. Long, N. V., Richardson, M., & Stähler, F. (2019). Media, fake news, and debunking. Economic Record, 95(310), 312–324.
15. Ng, C. W. (2016). The law of passing off – Goodwill beyond goods. IIC, 47(7), 817–842.
16. Olan, F., et al. (2024). Fake news on social media. Information Systems Frontiers, 26(2), 443–458.
17. Ordu, A. (2023). Damage to reputation on the internet. Erciyes Üniversitesi Hukuk Fakültesi Dergisi, 18(1), 113–137.
18. Oxford Learner's Dictionary. (2024). <https://www.oxfordlearnersdictionaries.com/>
19. Pierri, F., & Ceri, S. (2019). False news on social media. ACM SIGMOD Record, 48(2), 18–27.
20. Plucinska, J. (2018). Hate speech thrives underground. Politico.
21. Rodríguez-Fernández, L. (2019). Disinformation and organisational communication. Revista Latina de Comunicación Social, 74, 1714–1728.
22. Sunstein, C. R. (2019). Falsehoods and the First Amendment. Harvard JL & Tech, 33, 387.
23. Waldman, A. E. (2017). The marketplace of fake news. U. Pa. J. Const. L., 20, 845.
24. Wright, R. G. (2011). Lying and freedom of speech. Utah Law Review, 1131.



- 
25. Zamir, E. (2014). Law, psychology, and morality: The role of loss aversion.
26. Zannettou, S., et al. (2019). The web of false information. JDIQ, 11(3), 1–37.