

المحور الثاني الحكومة الجامعية المستدامة

مدى ملاءمة قواعد المسؤولية المدنية غير العقدية في القانون المدني

العراقي في تعزيز حوكمة الإستدامة الأخلاقية في الجامعات العراقية

The Extent to which the Non-Contractual Tort Liability Rules in the Iraqi Civil Law are Suitable for Reinforcing the Governance of the Ethical Sustainability in the Iraqi Universities

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الملخص

يُعنى هذا البحث بدراسة وتقدير مدى ملاءمة قواعد المسؤولية المدنية غير العقدية في القانون المدني العراقي رقم (٤٠) لسنة ١٩٥١ في تحقيق الإستدامة الأخلاقية للجامعات العراقية. وذلك لغرض تعزيز ودعم الحوكمة المستدامة للجامعات. وتنطوي إستدامة القواعد الأخلاقية في الجامعات على العديد من المبادئ، إلا أنه وعلى ما يبدو فإن أكثرها حيوية هو منع التمييز بنوعيه المباشر وغير المباشر، سواء بين أعضاء الهيئات التدريسية أم الطلاب، وحظر خرق الأمانة العلمية الأكاديمية لغرض الحفاظ على أخلاقيات البحث الأكاديمي. و جدير بالذكر فإن مشكلة البحث تكمن في تقدير مدى ملاءمة قواعد المسؤولية المدنية غير العقدية في القانون المدني العراقي في تحقيق الإستدامة الأخلاقية، لغرض تعزيز الحوكمة المستدامة للجامعات العراقية في هذا المجال. وعلى الرغم من أن مشروع القانون المدني العراقي لم يعتمد إلى تبني مبدأ المسؤولية الموضوعية إلا على نطاق ضيق ضمن مسؤولية الصبي المميز أو غير المميز أو من في حكمهما في المادة (١٩١)، إلا أن الدراسة توصلت إلى جملة من النتائج من أبرزها أن المسؤولية الموضوعية قد تكون النوع الأكثر ملاءمة من أنواع المسؤولية المدنية التي تسعى إلى تحقيق إستدامة القواعد الأخلاقية، وتحقيق الحوكمة المستدامة للجامعات العراقية. ويوصي الباحث المشرع العراقي بتبني مبدأ المسؤولية الموضوعية الناجمة عن الأخلال بالأخلاقيات المناهضة للتمييز ولخرق الأمانة العلمية الأكاديمية.

الكلمات المفتاحية: المسؤولية المدنية غير العقدية، مسؤولية المتبوع عن أعمال تابعه، المسؤولية الموضوعية، الإستدامة الأخلاقية، الحوكمة المستدامة للجامعات.

Abstract

This article of research is concerned with studying and evaluating the extent to which the non-contractual tort civil liability rules in the Iraqi civil law No. (40) of 1951 are Suitable in realizing the ethical Sustainability in the Iraqi universities, in order to reinforce the sustainable governance of universities. The sustainability of the ethical norms in universities encompasses a lot of principles, the most vital of which may be the prevention of both the direct and indirect discrimination, whether they be among the faculty members or students, and the prohibition of academic dishonesty, for maintaining the research ethics. It is worth-bearing in mind that the problem of the research lies in evaluating the extent to which the non-contractual tort liability rules in the Iraqi civil law are suitable in realizing the ethical sustainability in order to reinforce the sustainable governance of the Iraqi universities in this respect. although the Iraqi civil law-maker did only deliberately adopt the strict-liability doctrine in a limited scope within the liability of the minor or any one in his or her status in the article (191). But the study has reached many conclusions the most important of which is that the strict-liability may be the most suitable type of civil liability for realizing the sustainability of ethical norms. And reinforcing the sustainable governance of the Iraqi universities. The researcher recommends that the Iraqi legislator adopt the principle of the strict-liability from the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics.

Keywords: Non-Contractual Tort Civil Liability, Vicarious Liability, Strict-Liability, Ethical Sustainability, Sustainable governance of Universities.

Introduction: المقدمة

The introduction of the study includes the following points:

First: The Introductory Preface to the Topic: The ethical norms play a considerable role in maintaining and preserving the ethical sustainability, as well as reinforcing the sustainable governance of the Iraqi universities. Particularly those norms maintaining the academic equality and honesty, and prohibiting the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics. This study will try to evaluate the extent to which the extra-Contractual (non-contractual) tort liability rules in the Iraqi civil law are suitable or appropriate for reinforcing the governance of the ethical sustainability in the Iraqi universities. It is worth-noting that the extra-Contractual liability can be divided into two main sub-categories: The personal civil liability and the vicarious liability. But because the special nature of the violation or non-adherence to the ethical and academic norms reinforcing the anti-discrimination and anti-dishonesty governance of the Iraqi universities, a third type of the extra-Contractual liability, represented by the principle of the strict-liability should also be applied in these situations.

Second: The importance of the research: The importance of this research is represented by the significant effects of the extra-contractual tort liability in reinforcing the sustainability of the ethical norms, which maintain the academic equality and honesty, and prohibit the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics.

Third: The aim of the research: The aim of this research is to ascertain the significant of the extra-

contractual tort liability rules in realizing the governance of the ethical sustainability in the Iraqi universities.

Fourth: The problematization and questions of the research: The problem of this research focuses on the following two questions: first: To which extent are the non-contractual tort liability rules in the Iraqi civil law are suitable for reinforcing the governance of the ethical sustainability in the Iraqi universities? Secondly: What is the importance of the strict-liability principle in sanctioning and compensating the damage arising from the AI-powered discrimination, and AI-powered academic dishonesty and plagiarism cases in particular. And in other cases involved in the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics in general?.

Fifth: The methodology of the research: This research has followed the descriptive analytical method of scientific legal research, by studying the concept and the types of the civil liability arising From the violation of the ethical norms reinforcing the governance of ethical sustainability of the Iraqi universities.

Sixth: The structure of the research: This research has been divided into two sections. The first section discusses concept of the civil liability arising From the violation of the ethical norms reinforcing the governance of ethical sustainability of the Iraqi universities, whereas the second section is concerned with studying the types of the civil liability highly specialized in realizing the governance of ethical sustainability of the Iraqi universities and as follows:

First Section: The Concept of the Civil Liability Arising From the Violation of the Ethical Norms Reinforcing the

Governance of Ethical Sustainability of the Iraqi Universities.

Second Section: The Types of the Civil Liability Arising From the Violation of the Ethical Norms Reinforcing the Governance of Ethical Sustainability of the Iraqi Universities.

First Section

The Concept of the Civil Liability Arising From the Violation of the Ethical Norms Reinforcing the Governance of Ethical Sustainability of the Iraqi Universities

مفهوم المسؤولية المدنية الناجمة عن إنتهاك القواعد الأخلاقية التي تعزز حوكمة الإستدامة الأخلاقية للجامعات العراقية

In order to study the concept of the civil liability which arises from the violation of the ethical norms reinforcing the governance of the ethical sustainability of the Iraqi universities, we should focus on the definition of civil liability, in conformity with the notions of the Iraqi civil law, and some other relevant and important terms closely related to this topic, particularly the sustainability and sustainable development. As well as indicating the ethical norms to be preserved by the sustainable governance of the Iraqi universities as follows:

First Topic: The Definition of the Civil Liability Emerging from the Violation of the Ethical Norms

تعريف المسؤولية المدنية الناشئة عن إنتهاك القواعد الأخلاقية

The civil liability in general is sub-divided into two main sub-categories: the contractual liability and the non-contractual tort or negligent liability (Extra-contractual liability). The civil liability in general is defined⁽¹⁾ as the sanction of the breach of the obligation arising from the contract, or arising from the act causing an injury to the

third party. The contractual liability is being defined as the sanction of the breach of a contractual obligation. Whereas the non-contractual tort liability (Extra-contractual liability) from illegal or wrongful act is defined⁽¹⁾ as the sanction of the breach of one unchangeable legal obligation arising from the unlawful act. As far as the sustainability is concerned, the paragraph (16) of the second article of the Iraqi protection and improvement of Environment law No 27 of 2009 defined the sustainable development as the social and economical development which meets the needs and requirements of current generation without influencing on the need of next generation in the preservation with environmental system. It is worth-bearing in mind that the sustainability is defined⁽²⁾ as the ability of a system, entity, or process to maintain or preserve itself, or the ability of the human being to maintain a certain system, entity, or process for a long period of time. It is also defined⁽³⁾ as the ability to continue an activity in the long term. It can also be defined⁽⁴⁾ as the satisfaction of requirements and needs of the present generation without compromising the ability of future generations to satisfy their own needs and requirements. And is defined⁽⁵⁾ as the activities to preserve the environment for future generations, and is made up of three components: environment, equity, and economics. All of these definitions clarify that sustainability is a vision of the future that provides us with a road map and helps us focus on a set of values and ethical and moral principles and norms by which to guide our actions (a vision of the future that provides us with a road map to focus on a set of values and ethical and moral principles)⁽⁶⁾. It can also

be deduced or inferred from these definitions that the term "sustainability" is based upon four main pillars, each of which refers to a distinctive area: they are social, economic, human and environmental pillars⁽¹⁾. And this study will focus on of the most important aspects of ethical sustainability which is represented or embodied by the ethics of human-nature relationship. Particularly the sustainability of the maintenance or preservation of human excellence and personal competencies⁽²⁾.

Second Topic: The Ethical Norms To Be Preserved By The Sustainable Governance of The Iraqi Universities

القواعد الأخلاقية الواجب صيانتها أو الحفاظ عليها عن طريق الحوكمة
المستدامة للجامعات العراقية

We shall try in this topic to investigate or focus on some ethical considerations which can play a crucial and important role in maintaining and preserving the ethical sustainability, as well as reinforcing the sustainable governance of the Iraqi universities. And this importance emerges from the fact that the ethical sustainability or the sustainable development of the ethical norms requires a self-control of the current generation to meet the needs of future generations⁽³⁾. As we have mentioned earlier we shall focus, in this topic particularly and in all the parts of this study in general, on the ethics or ethical norms closely related to the sustainability of the maintenance or preservation of human excellence and personal competencies, by adherence to research ethics and academic integrity and honesty, as well as preventing the discrimination among faculty members and students in the Iraqi universities as follows:

First: The reinforcement of the sustainability of concepts of equity and equality by non-discrimination governance of the Iraqi universities: Generally speaking the Iraqis are equal in front of law without any discrimination or unfair treatment⁽¹⁾, in conformity with the article (14) of Iraqi constitution of 2005 which states that (Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status). The discrimination is defined⁽²⁾ as a hostile conduct or behavior running contrary to both the public policy and public interest. And considered as an unfair treatment towards a particular class of people. The Iraqi labor law No.37 of 2015 distinguishes between two types of discrimination: the article (25) defines the direct discrimination as any distinction, exclusion or preference based on race, color, sex, religion, religious community, opinion or political belief, origin or nationality. Whereas the article (26) defines the indirect discrimination as any exclusion distinction or preference based on sex, age or health condition, economic or social condition, affiliation to a trade union, and trade union activity and which has the effect of nullifying or impairing equality of opportunity or equality of treatment in employment and occupation. A more precise distinction can be made between the direct and indirect types of discrimination⁽³⁾. The direct discrimination is considered as an intentional discrimination, based on discriminatory intent or malice (willfulness)⁽⁴⁾, that is to say the victim is intentionally treated differently⁽⁵⁾. And the indirect discrimination, which is not based on discriminatory intent. Which means that the plaintiff does not need to prove the intention of

the defendant⁽¹⁾. And the civil liability arising from which is based upon the element of the damage rather than that of the fault. That is to say, this is not a fault-based liability, rather it is a strict-liability.

Second: The reinforcement of the sustainability of academic integrity and honesty by the governance of research ethics: The sustainability of academic honesty can be realized by the governance of research ethics in the Iraqi universities. and one of the most significant legal tools of realizing the governance of the sustainability of academic honesty is the civil law in general and the civil liability system in particular. The role of civil law in enforcing ethical governance is embodied by imposing the civil liability rules on higher education institutions, including faculty members, researchers and post-graduate students for non-adherence to academic anti-dishonesty ethics, and violation of the requirements of educational quality, which can be classified by Iraqi courts as a violation of a legal obligation not to harm anyone, or a general duty of care imposed by the law⁽²⁾. Ethical Review Boards can be formed to ensure that the scientific research in general follows ethical standards. Furthermore, they should be authorized to take strict measures against plagiarism and research misconduct. strict anti-plagiarism policies are aimed at ensuring credibility in academic work. It is to be noted here that the most considerable practice of the academic dishonesty is represented and embodied by the plagiarism, which is considered as a major concern for all the universities and their staff members⁽³⁾, can play a dangerous role in destroying the educational sustainability of academic quality by reducing innovation and research quality and

credibility. And although the third paragraph of the article (34) of the Iraqi constitution of 2005 encourages the scientific research and states that (The state shall encourage scientific research for peaceful purposes that serve humanity and shall support excellence, creativity, invention, and different aspects of ingenuity), but researchers should adhere to academic honesty standards and research ethics, and avoid the plagiarism as the worst academic dishonesty practice. Plagiarism is defined⁽¹⁾ as taking and using another person's thoughts and writings as one's own. It is also defined⁽²⁾ as the passing-off (misleading) the thoughts, words and ideas of another person as one's own (the plagiarist's own). But the author can avoid plagiarism by resorting to many methods, notably citations, quotation marks, and properly paraphrasing the original text. It is worth-bearing in mind that the plagiarism can be sub-categorized into four types: direct plagiarism, self plagiarism, cyber plagiarism and mosaic plagiarism. plagiarism is fundamentally an ethical academic problem, because it involves dishonesty, misrepresentation, and a lack of academic integrity. Because plagiarism runs contrary to ethics of higher education. Iraqi universities and courts are required to take stricter anti-plagiarism measures against plagiarists. and the system of the civil liability may be one of strictest measures to be imposed on plagiarists. If an action is brought of a lawsuit on the basis of the non-contractual tort liability of the plagiarist for his or her personal unlawful or illegal acts, the plagiarist will be adjudged to pay damages. Furthermore the Iraqi Universities and other academic institutions can legally

revoke post-graduate degrees if plagiarism is detected and proved.

Second Section: The Types of the Civil Liability Arising From the Violation of the Ethical Norms Reinforcing the Governance of Ethical Sustainability of the Iraqi Universities

أنواع المسؤولية المدنية الناجمة عن إنتهاك القواعد الأخلاقية التي تعزز حوكمة الإستدامة الأخلاقية للجامعات العراقية

Generally speaking, the non-contractual tort liability (Extra-contractual liability) can be sub-divided into two main sub-categories: The civil liability from the personal illegal or harmful acts. And the vicarious liability of the employers from the unlawful or wrongful acts of their employees. But because the special nature of the violation or non-adherence to the ethical and academic norms reinforcing the anti-discrimination and anti-dishonesty governance of the Iraqi universities, we should discuss also the principle of the strict-liability as follows:

First Topic: The Civil Liability of the Academic Institution Members and Researchers from their Personal Illegal Acts Violating the Ethics of the Iraqi Universities

المسؤولية المدنية الناجمة عن الأعمال الشخصية لأعضاء الهيئات الأكاديمية والباحثين إنتهاكاً لأخلاقيات الجامعات العراقية

To begin with, the civil liability from personal illegal acts can emerge or arise from the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics. As we have mentioned earlier, the personal illegal or unlawful act is embodied by the direct discrimination, which is considered as an intentional discrimination, requiring the discriminatory intent or willfulness. It is to be noted also that under The rules of

the non-contractual tort liability in the Iraqi civil law, the plagiarism is considered as an academic or scientific fraud, and can also be classified as an illegal or wrongful act. In order for the civil liability from personal illegal acts to emerge, under the general rules of the Iraqi civil law, three basic elements should be combined together as follows:

First: The basic element of the trespass or transgression: The Iraqi civil law No. (40) of 1951 is influenced or affected by the Islamic jurisprudence, particularly, the Mejlle of juristic rules of 1869, which is considered as a European-style Ottoman codification of Islamic law of the hanafite school⁽¹⁾, from which it borrows most of its rules. As well as being influenced by the Egyptian civil law No.131 of 1948. Therefore it adopts the trespass or transgression as the basic element of the civil liability arising from the unlawful acts⁽²⁾, as well as the damage and the causal link between them. It does not adopt superficially or apparently the basic element of the fault⁽³⁾, unlike the Egyptian civil law No. (131) of 1948. This is inferred or deduced from the formulation of the article (204) which provides that (Every trespass or transgression which causes other than the injuries mentioned in the preceding Articles entails payment of compensation). The trespass is defined as the deviation from the conduct or behavior of the reasonable person surrounded by the same external circumstances of the perpetrator. A distinction can be made between the fault and the trespass, in that latter is only the material element of the former. Because the fault is made up of two basic elements: the material element, that is to say, the trespass, and the moral element, the prudence and

discernment. This deviation is measured by an objective standard or test, in other words, the reasonable person test. The transgression or trespass in the Iraqi civil law is sub-divided into two aspects: the positive one which refers to the deviation of limits, and the negative one referring to the negligence and carelessness. The objective standard is more suitable than the subjective one. Because the subjective standard takes into account the personality of the tort-feasor or the unlawful act perpetrator (damaging party), this may lead to the emergence of the civil liability or accountability, although perpetrating the smallest and simplest deviation of conduct. Therefore, this standard is considered as unjust. Whereas the objective standard is more equitable, because it measures the deviation or perversion of the conduct of the illegal act perpetrator, and compares it with the typical conduct of the reasonable person surrounded by same external circumstances of the perpetrator. Without taking into account the internal circumstances. The external circumstances include both the temporal (time) and spatial (place) circumstances. It is also worth-mentioning that the article (186) of Iraqi civil law requires that the intentional willfulness or purposefulness be available, as well as the trespass or transgression for the tort liability from personal acts to arise, and the transgressor will be obliged to compensate. In brief we can infer that the article (186) refers to the fault rather than to the mere transgression or trespass itself, because it requires that two basic elements be satisfied. And the combination of both the willfulness and trespass or transgression means the perpetration of the basic element of fault⁽¹⁾. And these

two elements should be available in the liability (guaranteeing) of both the perpetrator of the unlawful act and the abettor. But this article will be outside the scope of our study, because it is unsuitable for both the non-adherence to both the anti-discrimination and anti-dishonesty ethics.

Secondly: The second basic element of the of the non-contractual tort civil liability arising from personal unlawful acts or the trespass or transgression committed, is the damage from which the aggrieved or injured (damaged) plaintiff suffers. Here also a distinction should be made between the damage caused by non-adherence to the anti-discrimination ethics and the violation of anti-dishonesty ethics. The victim of the discrimination may be one of the academic members, students or any other person concerned with the admission in the Iraqi academic institutions. Whereas the victim of the academic dishonesty may be the academic institution itself, or any other aggrieved organ, institution, corporation or any student harmed by the dishonest and plagiaristic misconducts, which are considered as a type of academic stealing or cheating⁽¹⁾. Therefore, no liability will arise, if no damage or injury happens⁽²⁾. The damage is sub-divided into material and moral damage or injury. The material damage is the hurt or injury which takes place in the plaintiff's body, property, right or a legal interest. Whereas the moral damage is the injury which hurts the plaintiff's feelings, emotions, honour, reputation, social standing, financial position (credibility), or other affairs of moral importance, in line with the first paragraph of the article (205) of the Iraqi civil law.

Thirdly: The third basic element of the of the non-contractual tort civil liability is the causal link or the causation between the unlawful act and the damage. Therefore no person will be liable for any act perpetrated by a third party, because this is neither acceptable legally nor logically ⁽¹⁾. The human is only liable for compensating the damage made only his or her own act. The causal link is normally broken by the extraneous cause, in conformity with the article (168) of the Iraqi civil law, which states that the debtor will be adjudged to pay damages for non-performance of his obligation, unless he proves that the impossibility of the performance was due to an extraneous cause. In brief the causal link or the causation within the concept of the non-contractual civil liability means that the damage is the direct consequence of the breach or the violation of the legal obligation⁽²⁾.

Second Topic: The Vicarious Liability of the Academic Institutions From their Employee's Violation of the Ethics of the Iraqi Universities

مسؤولية الهيئات الأكاديمية كمتبوع عن إنتهاك تابعيهم لأخلاقيات الجامعات العراقية

The same is true for the vicarious liability of the Iraqi academic institutions from their employees and academic members, it can also emerge or arise from the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics. As far as the non-adherence or violation of the anti-discrimination ethics, the Iraqi academic institutions can be vicariously liable for the personal unlawful and discriminatory acts committed or perpetrated by their employees and academic or faculty members. Particularly if they commit a direct or

intentional discrimination. These institutions can also be vicariously liable for their academic faculty members and researchers' non-adherence or violation of the anti-dishonesty ethics, if the academic institutions fail to perform the duty or the obligation of take a reasonable care to impose strict anti-dishonesty measures against all the researchers and post-graduate students perpetrating research misconducts, which threaten the research integrity and academic honesty ethics, and destroy ethical sustainability of the academic institutions. As well as imposing stricter anti-plagiarism measures against plagiarists. The Iraqi civil law regulated the vicarious liability in the article (219), which narrowly determines the concept of the employer⁽¹⁾, and states that (1-Government, municipalities and other institutions which perform a public service as well as every person who exploits an industrial or commercial enterprise are responsible for the damage (injury) caused by their employees if the injury resulted from an encroachment committed by them in the course of their service. 2-The employer will be able to relieve himself of the liability if he establishes that he had exercised the necessary care to prevent the injury or that the injury would have happened had he exercised the necessary care (caution)). It has been clearly pointed out that the vicarious liability of the Iraqi academic institutions as masters or employers may arise as a result of the faults perpetrated by its servants or employees. The realization of this type of civil liability in the Iraqi civil law requires that three conditions be satisfied⁽²⁾.

First: The existence of the relation of the subordination: this relation should exist between the employer and

employee or the master and the servant, in order for the vicarious liability to arise. It is based upon the authority of the employer over the employee, empowering the former to impose the control and guidance on the latter⁽¹⁾. This authority may either be legal or actual⁽²⁾. It is to be noted also that this relation may exist, whether it is based on a contract between the parties or not.

Secondly: The fault committed by the employee or the servant: the second condition or requirement is the fault committed by the employee. This fault is embodied by the illegal act perpetrated by the employee⁽³⁾. The fault of the employee may either be rebuttable or irrebuttable. But it should always be rebuttable, in accordance with the second paragraph of the article (219) of the Iraqi civil law.

Thirdly: In the course of employment: This means that the Iraqi legislator restricts the realization of the vicarious liability to the case in which the commission of the fault by the employee or the servant must takes place in the course of his or her employment to the employer⁽⁴⁾. If the employee commits the fault or the personal illegal act, because of the employment, but not in its course or during it. According to the article (219) of the Iraqi civil law, as opposite to the article (174) of the Egyptian civil law No 131 of 1948. Which considers the employee liable, even though the fault was committed due to the employment.

Third Topic: The Strict-Liability From the Damage caused By the Violation of the Ethics of the Iraqi Universities

المسؤولية الموضوعية عن الأضرار الناجمة عن إنتهاك أخلاقيات الجامعات العراقية

The strict-liability is based upon the basic element of the damage, rather than the element of the fault, upon which the civil liability from personal illegal acts is based. The victim or the aggrieved or damaged (injured) party is only required to prove the causal link or causation between the damage and the unlawful act. Therefore one of the Iraqi civil law jurists or scholars defines⁽¹⁾ the strict-liability a type of civil liability, which rules out completely or eliminate the concept of the fault, and is based only upon the concept of the damage, without proving the element of fault, upon which the fault-based liability is established. The strict-liability is also defined⁽²⁾ as a type of extra-contractual civil liability, which can be applied regardless of the element of fault or negligence. It is clearly pointed out from these definitions that the principle of the strict-liability is aimed at eliminating totally the element of the fault, and is specific or restricted only to the causal link or causation between the damage and the illegal act⁽³⁾. It is worth-noting here that although the principle of the strict-liability, featured by its material or objective tendency, is applied as narrowly as possible, according to the general rules of the Iraqi civil law, on the liability of the minor or any one in his or her status in the article (191), but the modern attitudes of the comparative civil law encourage the extension or expansion of its applications, due to the gigantic developments in the field of technology, industry and human rights. therefore it is logically thought that the application of the strict-liability principle is suitable to the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics. Particularly the indirect discrimination, which is not based on discriminatory intent, but on the damage inflicted on

the aggrieved (damaged) victim. this means that the plaintiff does not require to prove the intention of the defendant⁽¹⁾, and the civil liability will be established on the element of the damage rather than the fault. Therefore the civil liability arising from the unintentional indirect discrimination is not a fault-based liability, but a strict-liability. It should also be noted here that the strict-liability system will be the most appropriate to compensate the damage caused by artificial intelligence (AI) systems. Particularly when the AI-software is defective or erroneous, that is to say, the AI- or algorithm is manufactured with a defect of design error⁽²⁾. In these circumstances the strict-liability will be the most suitable civil liability system. And more preferable than the extra-contractual personal liability based upon the fault and negligence. In situations like these one of the most important advantages of the strict-liability is that it simplify the burden of proof of the causal link. Therefore, the damaged party only needs to prove that the damage has taken place, and the damaging party should prove that his conduct did not cause the damage, or he has performed the duty of reasonable care to avoid the damage⁽³⁾. It is obvious that the strict-liability can effectively be used in AI-powered discrimination cases, and AI-powered academic dishonesty and plagiarism cases. For example if the discrimination is discovered, consequently the plaintiff suffered a damage and a pure economic loss, and it has been proved that the AI-algorithm learned a bias from input data, which exacerbate or aggravate the existing discrimination and inequality⁽⁴⁾. In this situation many factors and parties may contribute to this biased AI-algorithm software.

Therefore, the proof of the causal link between the erroneous or biased conduct and the damage will be very difficult. The biased AI-algorithm can be attributed to the conduct of the academic institution itself, to the AI-designer, the AI-developer (the company developing the AI-algorithm, or the AI-trainer (the company providing the dataset to train the AI) ⁽¹⁾, particularly when the training samples used for machine-learning systems are biased⁽²⁾. Or even to the AI-algorithm itself, because of relying on the machine learning, which is defined⁽³⁾ as a branch of artificial intelligence (AI) and computer science which focuses on the usage of data and algorithms to enable AI to imitate the way that humans learn, gradually improving its accuracy. Or the feature enabling the (AI) to imitate the human intelligence, develop itself, and improve its accuracy. In summary we can conclude that application of the strict-liability is more appropriate to reinforce the governance of the ethical sustainability in the Iraqi universities. It is also worth-referring that the algorithmic discrimination is more applicable to the indirect discrimination, which focuses on the discriminatory effect, than to the direct discrimination, which focuses on the discriminatory treatment⁽⁴⁾. The researcher will suggest some important recommendations concerning the extensive application of the strict-liability to reinforce the governance of the ethical sustainability in the Iraqi universities.

Conclusions: الخاتمة

The conclusion is made up of both the findings and recommendations and as follows:

First: Findings: The study has reached the following findings:

- 1- The ethical norms play a considerable role in maintaining and preserving the ethical sustainability, as well as reinforcing the sustainable governance of the Iraqi universities. Particularly those norms maintaining the academic equality and honesty, and prohibiting the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics.
- 2- The non-contractual tort liability (Extra-contractual liability) is sub-divided into two main sub-categories: The civil liability from the personal illegal or harmful acts. And the vicarious liability.
- 3- The strict-liability principle is very significant and suitable for sanctioning and compensating the damage arising from the AI-powered discrimination, and AI-powered academic dishonesty and plagiarism cases in particular. And in other cases involved in the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics in general.
- 4- The principle of the vicarious liability of the Iraqi academic institutions can also arise from their employees and academic members, from the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics.
- 5- The extra-contractual tort liability, in general, plays a considerable role in reinforcing the sustainability of the ethical norms, which maintain the academic equality and honesty, and prohibit the violation or non-adherence to both the anti-discrimination and anti-dishonesty ethics.

6- The reinforcement of the ethical sustainability of the Iraqi universities can either be realized by the non-discrimination governance for propagating and encouraging the concept of equality, or by academic integrity and honesty by the governance of research ethics.

Second: Recommendations: After displaying these findings, the researcher suggests the following recommendations:

- 1- researcher recommends that the Iraqi law-maker widen or extend the scope of the application of the principle of strict-liability, and establish the civil liability from the violation or non-adherence to the anti-discrimination ethics on the strict-liability, particularly the AI-powered discrimination or algorithmic discrimination, considered as indirect or unintentional discrimination, based upon the biased AI-algorithm software. The strict-liability is the most appropriate to situations like these, because of the difficulty of proving the causal link, given the multitude of the factors affecting the AI-machine learning, for example, the AI-designer, AI-developer, AI-trainer, AI-provider or even the end-user. Therefore the researcher suggests that the Iraqi legislator adopt the following text: (The liability from the AI-powered indirect discrimination arising from the biased AI-algorithm software, should be established merely on the basic element of the damage, irrespective of proving the basic element of fault, represented by the willfulness and transgression).
- 2- The researcher recommends that the Iraqi law-maker widen or extend the scope of the application

of the principle of strict-liability, and establish the civil liability from the violation or non-adherence to the anti-dishonesty ethics, particularly the AI-powered plagiarism or algorithmic plagiarism. For the same reason of adopting the above-mentioned recommendation. Therefore the researcher suggests that the Iraqi legislator adopt the following text: (The liability from the AI-powered or algorithmic plagiarism, or any other conduct violating the academic dishonesty ethics, should be established merely on the basic element of the damage, irrespective of proving the basic element of fault, represented by the willfulness and transgression).

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