

## Compare and Contrast of Contractual Liability for the Third Party's Act under the Bahrain Civil Law and Jordanian Civil Law

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### Abstract

This study concentrates on the theoretical and applied aspects of the contractual liability under the third parties act; the theoretical aspect of this liability includes the definition, conditions, the range, features, provisions, and legal basis. Additionally, the most important applications of this liability within Bahrain Civil Law is discussed: Construction contract, and Lease contract. The research defines contractual liability under the third party act as a contractual liability which will be held when the debtor uses a third party to implement his contractual commitments, as long as there are no contractual terms preventing this.

**Keywords:** Wrongful act, contractual obligation, liability, Bahrain, Jordan, civil law, consent, consequences, servant, implementation, scope, negligence, reason beyond.

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### INTRODUCTION

Contractual liability is the result of a breach of a contractual obligation; whereas, liability for the wrongful (harmful) act is the result of a breach of a legal obligation. Although contractual liability and the wrongful act are different in legal nature, they share the necessary general elements of liability. The element of liability for the harmful act are action, damage, and causation; while contractual liability elements are: fault of the contractual, damage and the casual relationship. Therefore, we understand liability for the harmful act does not require any previous relationship between the person causing damage and the injured; while on the contrary the existence of a previous contractual relationship between the injured and the entity causing injury is necessary in terms of contractual liability. Hence, the injury arose by an obligation on the side of the debtor (the causer of injury) [1].

Well-known, if a contract arises in a correct manner which satisfies terms and conditions and regulates its effects, then the agreed upon contract creates stated obligations of each, or one, named party, depending on the contracts nature, whether it is a bilateral binding contract or a unilateral contract. Once the contract goes into effect, it is not possible for either party to dispose of the consented obligations; except in cases and in accordance with the conditions regulated by law. The resulting obligations must be performed in accordance with good faith in transactions. (Article 202

.Jordanian civil law & Article 127 Bahrain civil law) [2].

### Definition of Contractual Liability for the Third Party

Jordanian and Bahraini legislators have decided on the general rule of liability for the acts of third parties under the liability of the harmful act. Article 288 of the Jordanian civil law stipulated "1- no person shall be liable for the acts of another, and yet the court may on the application of the injured person and if it finds it justifiable hold liable for the awarded damage: a. any person who is under a legal or contractual obligation to supervise a person in need of supervision due to his minority or his mental or physical condition, unless he proves that he has fulfilled his duty or supervision or that the damage was to be inflicted even though he fulfilled his duty of exercising the necessary care, b. any person who had actual power to supervise and direct the person who had inflicted the damage even though he himself had not free choice if the injurious act was committed by the supervised person while or because of performing the duties of his post. 2. and the person who pays the damages may revert for them on the person adjudged to pay them." Bahraini legislation stipulated in article 170, "a. A person who is, by law or by agreement, entrusted with the supervision of a person who, on account of his minority or his mental or physical condition, requires supervision, is liable for damages for injuries caused to a third party by unlawful acts of the person under his supervision. The

responsibility exists unless he proves that he has exercised his supervision duty as he should or that the injury was inevitable even if he properly carried out this duty. (Article 170, Bahrain Civil Law and Article 288, Jordanian Civil Law) [3].

Jordanian legislator has not decided upon a general rule of contractual liability for the actions of third parties, this is only stated in scattered texts during the organization of some contracts, such as, lease contract, contract of deposit, contract agreement and loaned contract. On the contrary to the position of the Jordanian legislator, the Bahraini legislator provided a general rule of contractual liability for third-party actions, but indirectly. Article 219 of the Bahrain Civil Code stipulates, "The debtor may by agreement be discharged from all liability for his failure to perform the contractual obligation or delay in the performance thereof, with the exception of liability arising from his fraud or gross negligence."

Text analysis finds the general rule of third-party liability for the act of third parties has not been stated explicitly and/or directly. Rather, the legislator's authorization to the debtor not to be responsible for the fraud or serious error of persons who use him to carry out his obligation, unless the debtor is liable for the fraud or gross negligence that occurs from such persons is derived from the text.

Regarding the development of economic, industrial and commercial life, emergence of large enterprises and factories, entry of technology and machinery into those sectors, and the complexity of the production process, which no longer depends on the one person who is able to fulfill his obligations without the need to help others. In order to be able to fulfill its obligations, the contractual liability for the actions of others has received great attention and care, as it constitutes protection for creditors in light of the complexity of contractual relations [4].

Professor Abdul Razzaq al-Sanhuri defined it as "The contractual liability for the act of third parties may be realized if the debtor used third parties in the implementation of the contractual obligation, be liable for the contractual liability for the fault of third parties, and the contractual liability of third parties where there is a valid contract between the liable and the injured and where the third party is entrusted with the implementation of this contract" [5].

Therefore, the researcher proposes the following definition of contractual liability for the acts of third parties: "Contractual liability for the act of the third parties is the debtor's liability in a contractual obligation, breach of this obligation arising out of the acts of the third party, who were charged with an agreement, or by law to performance the contract, or they have the right to exercise the contractual rights of

the debtor if such breach occurs when the contract is performance or cause of its performance."

### **The Scope of the Contractual Liability for the Act of Third Parties**

#### **The Substantive Scope**

The contract liability arising from the actions of third parties within the execution of the contract does not arise unless the contract between the debtor and creditor is valid. Hence it is the responsibility of the third party, which entails the breach was not a result of the debtor's actions, but instead the third party legally in charge of executing or assisting in the execution as a result of or during the enactment of the contract.

The extent to which the contractual responsibility in the phase of formatting the contract, in the intervention of the third parties, takes one of two approaches: the first consider a legal representative, when a contract is concluded by a representative within the limits of his authority in the name of his principal, the rights and obligations resulting therefrom will be in favor of and binding upon the principal. While the second approach is the intervention of the third parties in the conclusion of the contract as the messenger who is a contributor to the transfer of will [6].

In the first approach, the representative is appointed by an agreement who acted in accordance with his principal's precise instructions, the principal cannot plead the ignorance of his representative of circumstances which the principal knew or should necessarily have known. Thereupon, the principal's vices of consent should be reckoned, and when a contract is concluded by a representative within the limits of his authority in the name of his principal, the rights and obligations resulting therefrom will be in favor of and binding upon the principal. Therefore, the main element in the liability of the third party is the existence of a valid contract between the creditor and the debtor [7]. In perspective, the responsibility in this case is tort liability for the personal act on the part of the perpetrator of the cause of the damage, or the responsibility of the principal for personal action, if he was neglected in the selection of his representative. As for the messenger, if the mistake was issued by the contractor there is no way to point contractual responsibility for the actions of the third parties. In the case of error of the messenger, the contractor shall be liable for tort for the act of the third parties as a subordinate asking for the act of his fellow servant for the availability of the elements of this responsibility, since the messenger is subject to the supervision and control of the contractor.

#### **Personal Scope**

In order to complete the determination of the scope of contractual liability for the actions of third parties, we must identify the third party, which the debtor is liable for his acts or mistakes.

The third party to whom the debtor is responsible for the contractual liability for the act of third parties takes one of two forms. First, such third parties are the persons who are assisted by the debtor to carry out the execution of the contract beside him. They are all considered assistants and supporters. Secondly, such third parties shall be the persons to whom the debtor is assigned to perform the obligation in whole or in part instead of him, the substitutes. We find that the assistant is a person working alongside the debtor under his supervision and control. The alternative is the person who fully implements the obligation, or individually performs part of it entirely, and is independent, not subject to the supervision and control of the debtor, for example, a subcontractor [8].

### **Characteristics of the Contractual Liability for the Acts of the Third Parties**

Contractual liability for third-party acts has characteristics which distinguish them from other types of civil liability. Perhaps the most prominent of these characteristics is the liability derived of contractual liability, this distinguishes them from the corresponding responsibility for the harmful act.

While another characteristic of third-party liability is based on the act or fault of the third parties, characterizing the liability of the third party for personal liability. Personal contractual liability is based on the personal fault of the contracting debtor. Whereas, the contractual liability based on the fault of others who have been used by the contracted debtor in the execution of his contractual obligation in the third party liability.

The last characteristic of a third-party liability, is the third party is the one who bears the penalty resulting from its arising. In contrast to personal contractual liability, where the debtor is liable for the breach of the obligation and is liable for it. The third party who caused the error which led to breach in the implementation of the obligation, is the one who bears the penalty of this responsibility through the return of the debtor. The assumption of third-party liability for third-party acts is a logical and just consequence, because it was based on error or action issued by the third party itself [9].

### **Terms and Conditions of Third Party Liability**

Third-party liability, similar to all other types of civil liability, requires the existence of a set of conditions for which the availability of liability is a contractual responsibility for the act of third parties, if the contractual liability for the act of third parties is met.

First, there must be existence of a valid contract between the creditor and the debtor (the injured and the responsible). Until a liability can arise to

implement the act of third parties, there must be a valid contract produced to raise legal effect between the debtor and the creditor. Second, third parties must be assigned to implement the obligation. Discussion of contractual liability for the act of third parties it not possible unless the third party has been assigned to implement the contractual obligation, whether the assignment is by the debtor legally or by agreement. Thirdly, breach of contractual obligations by the third parties: in order for the third party to assume responsibility, it is necessary to breach the contractual obligation which it has committed, and occurred damage in the event of execution of the contract or cause of its implementation. This condition is what distinguishes direct contractual liability, based on the debtor's personal fault, and the contractual liability for the act of the third parties which based on his fault [10].

### **Provisions of contractual liability for the third party acts**

If the contractual liability of the debtor for the act of third parties is realized, the provisions of liability for personal acts are generally applied, since the performance of the liability of third parties involved in the execution itself entails the debtor's liability, The creditor must have suffered damage so that the debtor could be held liable for the breach of the obligation and provided that such damage had already occurred or was confirmed in the future (Hassan Ali, Al-Din) , If the breach of the contractual obligation does not cause damage to the creditor, there is no room for saying that the liability is contractual, and that such damage must be foreseeable at the time of the conclusion of the contract, because the compensation for the liability does not cover all damages resulting from the breach of the obligation, But only to the direct damage expected at the time of conclusion of the contract. While the Unforeseen damage may not be claimed. The damage is direct if it is a natural consequence of the breach in the performance of the obligation and is considered to be direct damage if the creditor cannot reasonably anticipate it, if a person contracts with a transport company the transfer of water pump machines, and these machines are drawn during the transport because of an accident suffered by the vehicle that was carrying these machines, resulting in the inability to use the well that was designed to install the pump on it, In this example, the damage of the pump due to the accident is the direct damage that is compensated for it because the owner could not avoid the occurrence of the damage. The subsequent damages are indirect damages that cannot be compensated because the creditor could have been tempted to seek another way to irrigate his land. It is not sufficient that the damage is direct and should be foreseen when the contract is concluded as a result of the breach of the obligation, and the expected damage is measured by an objective criterion rather than a personal standard, that is, the standard of the ordinary person in the case where the debtor is located. If a person undertakes to transfer a package from one place

to another, and the owner of the parcel does not disclose the contents of the parcel to the contractor, the package was lost during transport and it was found to contain jewelry. The value of jewelry, because any ordinary person if he found his place would not have expected the package to contain jewelry, since it was not customary to transfer valuables in such a way, and therefore the carrier was only asked for a reasonable value for the discharge considered to be the expected damage to its loss. The reason for limiting the liability for the foreseeable damage is that the contractors have specified the scope of the contract, the compensation must be limited to what was included in the calculation at the time of the contract, the expected damage, and the unexpected damage was not accounted for and therefore no compensation, however if the breach of the obligation is due to fraud or gross negligence, the compensation covers all anticipated and unexpected damages, because the person who deliberately breaches the contract is in violation of the interests of the other contractor and does not have to rely on the contract to determine his liability in this case [11].

The contractual fault required for the liability of the debtor to breach the obligation of the debtor, whether intentional or negligent, by the debtor, as well as if the debtor's breach of the obligation was due to a reason beyond, until he Proves the force majeure or fault of the creditor, in this regard, a distinction must be made between the obligation to achieve an objective and the obligation to pay attention. If the obligation of the debtor is a commitment to an end, such as the obligation to transfer ownership of something, the failure to achieve that objective is a contractual fault based on its contractual liability, however If the obligation of the debtor is an obligation of care, the debtor must pay the ordinary man's attention so that he or she has performed his contractual obligation - unless otherwise provided by law or agreement - if the desired result of the contract has not been realized, Shortens the required care [1].

#### **Proof of Fault**

It has also been shown that proof of fault is different according to the nature of the obligation. If the obligation is an obligation to achieve a result, the contractual fault is achieved by not achieving that result, regardless of whether it is the fault of the personal debtor or the mistake of the persons who used it in the implementation of its obligation, If the obligation is an obligation to care, the lack of due diligence of the ordinary man's care, unless otherwise provided by law or agreement, constitutes the contractual fault on which the contractual liability is based [8].

Proof of the fault is different, In the case of personal contractual liability, the creditor must prove that the debtor has not taken the necessary care to implement its contractual obligation, and that in the

contractual liability for the act of others, the creditor must prove that the third party has not performed the necessary care to implement the obligation of the contractual debtor, and this in cases where the debtor has the right to use third parties [12].

#### **Exemption from contractual liability except in case of fraud or gross negligence**

The Jordanian Civil Code did not include an explicit provision dealing with the requirement of exemption from contractual liability, while the Bahraini civil code stipulates in article 219” The debtor may by agreement be discharged from all liability for his failure to perform the contractual obligation or delay in the performance thereof, with the exception of liability arising from his fraud or gross negligence”.

In order to determine the position of the Jordanian legislator on the condition of exemption from contractual liability, it is necessary to analyze the relevant texts and to develop this position through these texts. Article 213 of the Jordanian Civil Code expressed the principle of the power of will, and the freedom of that will to arrange the obligations and to include conditions for the contract, Article (164/2) also authorizes the association of the contract with any condition that was not prevented by the legislator or is not contrary to public order or morals. We note that article 358/1 has set out the necessary care to consider the debtor to fulfill its obligation, which is the care of the average person, and exempts from that a legal provision or contrary agreement, which is an implicit reference to the possibility of exemption from or derogation from the contractual liability by the parties. The second paragraph kept the debtor liable for gross negligence or fraud in all cases, on the contrary, contractors can agree to waive contractual liability in the event of a normal error. We find that the legislator has stated that it is not permissible to waive the liability for a harmful act under article 270, while he has kept silent in the framework of the contractual responsibility, and explains this silence as permissible or mitigated, even if the legislator wants to prevent the agreement On the condition of exemption from contractual liability to provide for it as it did with respect to liability for the wrongful act [14].

In light of the above, we find that the condition of exemption from the contractual liability, or mitigation or emphasis is permissible under the provisions of the Jordanian Civil Code, although not stated in explicit and direct, but this clashes with the text of article (364/2), which gave the judge Has broad discretion in balancing the content of the requirement of exemption from contractual liability, between the damage actually occurring and the award of compensation in accordance with actual injury. We find that there can be no exemption from liability in the cases of fraud and gross negligence, because responsibility in cases of fraud and gross negligence

turn to the liability arising from a harmful act, and not a contractual liability.

We conclude that contractors may agree to waive or mitigate the liability of the debtor if the debtor's breach of its contractual obligation is the result of a normal fault, If the debtor's breach of the obligation is due to fraud or gross negligence, it may not be agreed to exempt him from his contractual liability, because the debtor is considered to have violated good faith considerations in the execution of the contract and the debtor's serious mistake or fraudulent It is considered as a sinful fault , but it is considered as a reason for responsibility for the harmful act, which cannot be exempt from it because it is from the public order [15].

#### **Guarantee the right of the creditor to compensation**

The debtor is solely responsible for the breach of the contractual obligation in the case of the contractual liability arising from the debtor's personal fault, which means that the creditor has only the debtor to claim compensation for such breach, , The debtor may be in insolvency, which may expose the creditor's right to loss, while in the third party liability is different, where the third party whose action caused the debtor to breach the obligation is the real party, thereby providing the creditor with additional security to obtain his right , In the case of insolvency of the debtor the creditor may refer to such third parties to satisfy the amount of compensation [8].

We conclude from the foregoing that the contractual liability for the act of third parties provides a greater guarantee to the creditor in the fulfillment of his right than the personal liability, where the creditor has the contractual liability for the act of third parties, the original debtor with whom the creditor has the contractual relationship in respect of which the obligation arose, In the implementation of its contractual obligation, unlike the personal contractual liability in which the creditor has no right to satisfy the original debtor, and the liability of both the original debtor and the third party for the liability of the third party is not a liability of solidarity, but a liability of solidarity, because solidarity within the scope of liability is not presumed in the event of multiple debtors in the contractual obligation [12].

#### **Applications of Third Party Liability in the Jordanian and Bahraini Civil law Contractual Liability for the Acts of the Third Parties in Construction contract**

Article (798) of the Jordanian Civil Code stipulates: 1. The contractor may delegate the execution of all or part of the work to another contractor if he is not precluded by a condition in the contract or the nature of the work does not require that he is execute the work himself, 2. and the liability of the first contractor towards the employer shall subsist.

Through the text of Article (798) of the Jordanian Civil Code, and the corresponding Bahraini Civil Code, we find that both legislators have allowed the contractor to use third parties in the implementation of the contractual obligation, while retaining his liability to the employer despite such use. Hence, the contract of agreement is an explicit application of the contractual responsibility for the act of third parties in both the Jordanian Civil Code and the Bahraini Civil Code.

#### **The Concept of Contractor's Contractual Liability for the Third Parties' Acts**

The construction contract is one of the most widely used contracts. Perhaps, the essence of the construction contract is the object of the contractor's obligation is to carry out work, or to manufacture something for the employer for a fee. Thus both parties in the contract agreement are the employer, who the work is to be done for, and the contractor is the manufacture of the thing or work agreed upon within the contract.

The Jordanian legislator defined the contract for independent work in Article 780 of the Civil law, stated as, "The contract for independent work is a contract by virtue of which one of two parties undertakes to manufacture an object or to perform work for a consideration which the other party undertakes." Corresponding to Article 584 of the Bahraini Civil Code, which states, "By a contract for work one of the contracting parties undertakes to do a piece of work or to perform a service in consideration of remuneration which the other party undertakes to pay without being affiliated thereto or acting as a deputy thereof." (Article 780, Jordanian Civil Law and Article 548, Bahrain Civil Code).

Noted, the civil legislations defined the contract; however, they did not specify the contractor nor specify the contractor's intent in the contract agreement. Furthermore, the majority of Jurists of civil law who have explained the contract within their writings did not specify the contractor's meaning. Thus, we can define the contractor as a person or firm that undertakes a contract to provide materials or labor to perform a service or do a job.

In order for an entity to be considered a contractor, therefore subject to the provisions of the contract agreement stipulated in the Civil Code, two conditions must be met. The first condition relates to the debtor's object of obligation, meaning they must perform work or provide material. The second condition is the debtor is independent in their implementation of their obligation to the employer. Such independence does not mean that the debtor has the absolute discretion to carry out its obligation, without any role for the other party, but rather the debtor performs his obligation in accordance with the terms previously

agreed upon with the employer, without being subject to direct supervision and control of the employer. It should be understood; the contractor may be a natural person or may be a legal person [16].

The works that are the subject of construction differ from one construct to another. They differ in terms of the nature of the work, its size and, in terms of the nature of the work, the work may not relate to anything, such as the transfer of persons, publication, printing and advertising. It may be connected to a particular object, either not existing at the time of the contract, and the contractor will make it with a material from him or from the employer, such as the carpenter makes furniture with wood from him or from the employer, or to be present at the time of the contract and the contract is returned to the contractor to work in it, as a car repaired or construct rebuild. In terms of volume of work, the construction differs between small contractors, such as carpentry and blacksmithing, to other large, such as the construction of buildings and fixed facilities. In terms of gender of work, there are construction contracting, public utilities, public works contracts, contract of transport, publishing contract, advertising contract, and free professions contracts, each of which has certain characteristics that distinguish it from others.

#### **The Scope of the Contractor's Liability for the Act of Third Parties**

In order to determine the extent of the contractor's liability for the act of third parties, determinations must be made regarding the scope of liability in terms of persons which we ask the contractor for their mistakes, as well as the scope of liability of the contractual contractor for the act of the third party in terms of subject matter.

#### **The Scope of the Contractual Liability of the Contractor for the Act of Third Parties in Terms of Persons**

As mentioned above, the contractual liability for the act of third parties requires the existence of conditions for their establishment. The existence of a valid contract between the contractor and the employer is the most important condition for the contractor's contractual liability. The other condition, no less important, provides the breach in the execution of the contract agreement is not personally issued by the contractor, but must be issued by the persons who were used in the implementation of his contract agreement. The persons employed by the contractor can be classified into two groups, the first is the range of substitutes, and the second is the range of assistants.

The replacements are those persons assigned by the contractor to perform the obligation in whole or in part, without the intention of this commissioning process to remove himself from the contractual relationship which binds the employer. The substitutes

carry out the work entrusted to them independently without being subject to the direct supervision and/or control of the contractor. Substitute's role is also limited to assisting the debtor in the execution of his obligations under the contract agreement, without reaching replacement the contractual relationship between him and the employer. Although, if the contractor uses the substitute in the execution of its commitment, the contractor still remains responsible for the implementation of the obligation in place of the contract of the construction contract, and shall remain responsible to the employer for any breach of execution issued by the substitutes [17].

The opinion of the jurists differed regarding the extent to which the contractor was allowed to use the substitute in the execution of his obligations to the subject of the construction contract. Some jurists were of opinion it is not permissible to use replacements without obtaining the consent of the employer. While others believe the contractor is free to use the substitutes in the implementation of the obligation in whole or in part. However, article 798 of the Jordanian Civil Code and article 604 of the Bahraini Civil Code have settled the dispute. Each have authorized the contractor to use substitutes in the execution of the contract agreement, unless there is a condition to prevent this, or the nature of the obligation requires execution by the Contractor as stipulated in article 604, "a. A contractor may entrust the execution of the whole or part of the work to a sub-contractor, unless he is precluded from so doing by a clause in the contract or unless the nature of the work presupposes reliance on his personal skill." (Article 604, Bahrain Civil Law).

The above information concludes contractors which resort to replacements in the implementation of their obligation to the object of the contract agreement is permissible as long as the nature of the obligation does not conflict, and it does not require the contractor to perform the obligation himself. In this, the contractor's personality is not considered, and as long as there is no condition preventing the contractor from using third parties in the implementation of his obligation.

The subcontractor is one of the most important substitutions used by the contractor in the execution of the construction contract, this is where the secondary contractor carries out the work entrusted to him under the subcontract agreement. This happens out of the supervision and guidance of the original contractor, and any breach by the subcontractor represents in the implementation of obligations arising from the subcontract agreement breach of the original contractor's obligations against the employer. In such case, the sub-contractor shall not affect the contractor's original obligations towards the employer and shall be answerable towards him for the sub-contract works [18].

Upon conclusion of the subcontracting contract, the original contractor remains obliged to the employer and the obligations which arose from the original construction contract. The subcontractor shall be bound to complete the work of the original contract, and deliver the work upon completion. Accordingly, the Subcontractor shall not be directly liable to the Employer, but remains responsible to the original contractor; therefore, the original contractor is responsible towards the employer. The employer shall have recourse to the original contractor, then the original contractor shall return to the sub-contractor. Moreover, if the subcontractor has breached his obligations, the person responsible for the work is the original contractor, not the subcontractor, as well as the original contractor is liable for the third party acts [14].

The second group of persons employed by the contractor in the implementation of his obligation is the assistants. Those persons whom assist the contractor in the execution of his obligations in the object of the contract agreement. Employees, users, and workers employed by the contractor are regarded as assistants.

Distinguishing the role played by assistants in the implementation of the contractor's obligations to the role played by the substitutions, is that assistants are often supervised and directed directly by the employer during the implementation of the obligation, while the substitutes are independent in carrying out the obligation entrusted to them. Contrary, the role of assistants is limited to assisting in the implementation of the contractor's obligation, while the role of substitutions shall be to perform part or all of the Contractor's obligations as agreed.

Some of lawyer believe that the contractor has the right to resort to the assistants and to use them in the implementation of his obligation to the subject of constructing contract absolutely, that is, the contractor can always use the assistants in the implementation of the obligation, as long as their role only to help the contractor in the implementation, without independence during the course of their assistance, without reaching their role as a substitute [18], we believe that the debtor has the right to use the assistants absolutely, even if there is an agreement with the creditor that he must implement the contractual obligation himself without recourse to third parties, because the intention of the contracting parties if such exists the agreement is often interpreted as intended to prevent the debtor from assigning the work to others, without the intention of the debtor to seek help from others as an assistant or a collaborator. The client, even if he agreed with the tailor that he himself is sewing the suit, this agreement does not prevent the tailor from assuming the help of one of his workers or his employees in sewing the suit, to just help without reaching the extent of solutions to replace him in the completion of the work, as if the role

of the worker was limited to sewing buttons or suit after sewing by the tailor [8].

The researcher does not agree with what they illustrate in the above mentioned, and what Mr. Mohamed Hanoun went to, that the contractor can use the assistants absolutely, whether there is an agreement with the employer to perform the obligation himself without the help of others, Or the nature of the obligation requires the contractor to implement it himself, the contractor's use of the assistants, however, constitutes a breach of the contractor's obligation to perform the obligation himself, and thus the contractor is directly liable for his personal fault if the assistants implement and breach the obligation in the object of the construction .

The assumption that the intent of the Contracting Parties, if any such agreement exists, to prevent the implement of the obligation to third parties without preventing the contractor from employing assistants is a presumption that is not based on a sound legal basis and is not supported by the reality of the working life, It should be noted that the contractor has the right to use third parties and assistants in the preparation stage to implement its contractual obligation or after the completion of the implementation of that obligation. In such case, the contractor has not violated the contract obligation to the contract itself, Outside the framework of its contractual obligations, if there is a breach of third parties, it shall be liable for the harmful act (the responsibility of tort) for their actions if the availability of the elements and conditions, and not personal responsibility for personal action.

If the use of the assistants results in a breach of the Contractor's obligation, the Contractor shall be liable to the Employer for such breach, and the Contractor's liability shall be a contractual liability for the act of third parties, as is the liability in the case of the Contractor's use of substitutes in the implementation of its Contractual Contract , And there is no chance to speak of a tortious liability on the part of the contractor (the responsibility of the perpetrator of the acts of the subsidiary), as long as the breach has been placed on one of the contracting contract obligations. And does not affect the liability of the contractual contractor for these assistants, the nature of the relationship between them, whether contractual or non-contractual, and whether they are paid for the assistance they provide to the contractor or were donors [19].

The assistants within the scope of the construction of contract are the persons employed by the contractor to assist him in the implementation of his obligation under the contract of undertaking by performing certain material or legal acts that would assist the contractor in the execution of his construction contract, The contractor uses a group of workers to assist him in implementing his obligation to build a

house, or use it with a group of staff, such as the secretary or technical supervisors such as the architect, who do material and legal work to assist the contractor in fulfilling his obligation [8].

The right of the contractor to seek the assistance of assistants is permitted as long as the nature of the obligation is not opposed, and there is no agreement between the contractor and the employer that the contractor himself shall perform the obligation, as is the right of the contractor to use the replacements [7].

As noted above, the contractor's responsibility for the acts of assistants used in the implementation of its obligation in the construction of the contract, which led to the breach of the obligation, is a contractual liability for the act of others, so long as the acts of such assistants do not constitute a reason beyond, The contractor's liability for the acts of those responsible cannot be a tort liability (the liability of the follower for the fellow servant ) as long as the breach has been placed on the obligations arising from the construction contract.

#### **The Scope of the Contractual Liability of the Contractor for the Act of the Third Parties in Respect of the Subject**

In terms of the objective scope of the contractual liability of the Contractor for the act of third parties, it is only possible to speak of such liability when a valid contract exists between the Contractor and the Employer. Breach in the execution of the Contractor's obligation shall have arisen from the act of the third party employed by the Contractor in the performance of his obligation, whether those are assistants, or were they substitutes, when the contractor uses workers to complete the construction he has undertaken to establish for the employer, or assign part of the work to a subcontractor, He shall be liable for such harm to the employer as those persons caused the damage [18].

Until the liability of the contractual contractor for the act of third parties, the breach of the obligation of the third parties employed by the contractor in carrying out its obligation shall be a breach on the obligations arising from the construction contract. If the breach is not on one of these obligations, we are not in the responsibility of the contractual contractor for the act of third parties [20].

The construction contract dissolved with reasons for which contracts generally expire. Of course, it ends if both parties to the contract fulfill their obligations, the contractor has fulfilled his obligation in the contract agreement and the employer has paid. Thus, the construction contract was terminated and the contractual bond between the employer and the contractor expired.

However, the legislator imposed long-term obligations on the contractor despite the termination of the construction contract, which is the obligation of the debtor to guarantee, provided by the legislator in some contracts, including construction contract, under this obligation, the Contractor shall remain liable to the Employer within a certain period of termination of the Contract. The Employer shall have recourse to the Contractor in the event of a defect or damage to the work performed under the Construction contract. Furthermore, his liability is considered contractual liability as it relates to a breach of a contractual obligation. If the breach is the result of his acts, his responsibility is a direct contractual responsibility for his personal fault. However, if the breach is the result of the act of the third parties who used them in the performance of the obligation, then the liability is a contractual liability for the act of the third parties [16].

However, the question arises as to the extent to which the contractual liability of the contractor is the act of the third party employed in the execution of its obligation by assistants, if the breach by them is not a function of the obligations of the contract, but has been breached outside the obligations of the contract, but it occurred on the occasion of the implementation of one of these obligations. For example, the worker used by the contractor to build a house broke the car of the employer's car during the execution of the contract.

The jurisprudence differed as to the extent to which the contractual liability of the contractor is the acts of the assistants who use them in the execution of his contract, which causes damage to the employer, which does not constitute a breach of any of the obligations of the contract. The first group considers that the contractual liability of the contractor for all damages caused by the fellow servant, that is, the contractor has to bear the risk of using fellow servant. That group have argued that the fact that the liability of a third party for the act of third parties does not require a strong link between the act of the fellow servant causing the damage and the contractual obligation of the contractor other than the tort liability of the third party, which requires that the damages caused by the fellow servant be obtained while performing his or her function ,They also believe that, since tort liability (the responsibility of the follower responsible for the acts of the fellow servant is the result of accidents occurring on the part of the workers on the performance of their functions, it is more applicable to the same judgment on the liability of the contractual contractor for the acts of fellow servants [18].

The second group considers that the liability of the contractor for the actions of its fellow servant should be limited to the breach of the contractual obligation itself, meaning that the liability of the contractor for the acts of the fellow servant is only if it has breached the contractual obligations. Contractor

Contractual for the act of others, Their argument is that the contractor cannot be held liable for the actions of his fellow servant that damage the employer, unless the debtor can be held liable as a contractual liability for such acts if he has committed by himself in the course of the execution of his contractual obligation, otherwise to make the contractor's situation worse If he had performed the obligation himself, the contractor's liability for the act of third parties would be broader than the scope of his responsibility arising out of his own act, which could not be recognized, On the other hand, most laws have stipulated that an act of breach by a fellow servant occurred in the performance of his or her function, in relation to tortious liability for the act of third parties, it is more necessary to stipulate that requirement in respect of the contractual liability for the act of third parties [21].

We tend to take the Second Panel's assertion that Contractor's liability is not for the actions of the Affiliate unless it is in compliance with the obligations of the Construction. If, however, it is outside the scope of such obligations, we are directly liable for the fault of the fellow servant Personally or a tort liability The third party if the conditions are satisfied.

#### **Contractual Liability for the act of Third Parties in the Lease Contract**

The lease is one of the most important applications of third-party liability. Whether in Jordanian civil law or in Bahraini civil law, each of the legislators, during regulation of the lease and its provisions, addressed the obligations of the lessor towards the lessee and the lessee's obligations to the lessor.

The contractual liability for the act of third parties in the lease is shown clearly by the lessor's obligation to guarantee trespass, a matter which may be issued by the lessor personally or by third parties. Additionally, the tenant's obligation is to maintain the leased property, and shall be responsible for any damage incurred to the leased property. Restitution in the same condition that the lessee received, whether such damage was caused by his personal fault, or by mistake of those who reside there with him [22].

#### **The scope of the Lessor's contractual liability for the act of third parties**

Article (684) of the Jordanian Civil Code stipulated: "1. The lessor shall not cause to the lessee any problem in recovering the benefit during the period of the lease and shall not make any alteration in the leased property which precludes the benefit therefrom or impairs the contracted benefit and otherwise he shall be liable for damages. 2. The lessor's liability shall not be limited to his own acts and the acts of his subordinates but shall also extend to every obstruction or damage by any other lessee based on legal ground or by any person whose right devolved from the lessor."

The Bahrain civil law stipulated in article (519): "The lessor shall abstain from doing anything which may disturb the lessee in his enjoyment of the leased property, and shall not make any alterations to the property or to its accessories that diminish such enjoyment. The lessor not only warrants the lessee against his own acts and against those of his servants, but also against any disturbance or damage based on a lawful claim by any other lessee or by any successor in title of the lessor." (Article 684, Jordanian civil law; Article 519 Bahrain civil law) [2].

One of the most important obligations of the lessor before the lessee is the obligation of the lessor to enable the lessee to make full enjoyment of the leased premises. The texts of the above articles confirm this obligation. The article requires the lessor to guarantee to the lessee the personal trespass, whether material or legal. Furthermore, it did not limit the lessee liability and his servants, but also against any disturbance or damage issued by third parties based on a lawful claim, without warrant against trespass by a third party. However, the examples of legal trespass by third parties include the case of a person other than the lessee who is a lessor of the premises, or has a right of usufruct or servitude to it, or is the owner of the premises and the lease does not apply to him. In contrast to Bahrain civil code, the Jordanian legislator did not oblige the lessee to notify the lessor of the trespass of the third party so that he can push. Bahrain Civil Code required the lessee to notify the lessor of such trespass as stipulated in article (520) stating, "If a third party claims to have rights incompatible with those derived by the lessee from the lease agreement, the lessee shall forthwith give notice to the lessor of such a claim." (Article 520 Bahrain civil law).

In this regard, it is necessary to distinguish between followers and third parties, and to specify the meaning of the followers who guarantee the lessor their trespass. The lessor followers are not third parties, but rather an extension of the lessor's personality. Accordingly, the lessor shall warrant the material and legal trespass of these followers, other than liability for third party trespass which is limited to legal trespass.

Followers are defined as everyone who is not a foreigner in the implementation of the lease, including those who assist the lessor in the exercise of his rights and the performance of his obligations arranged by the lease, such as servants, employees, workers, craftsmen, family members, friends and guests. It is not limited to the followers of the help of the lessor, but includes those who replace him in the exercise of his rights and the implementation of obligations arising from the lease, as the contractor and the engineer in the event of repairs to the leased premises. Also included, the meaning of followers in this regard, those whom are acting on behalf of the lessor, such as the guardian, curator and trustee, along with the followers of a

universal successor and the particular successor of the lessor. Additionally, anyone who received a right as another tenant of the lessor himself, or committed to him with a pledge for their own benefit or self-account.

In the event of material damage from one of the lessors to the lessees, this trespass is deemed to have been issued by the lessor himself, and shall be liable to the lessee for contractual liability for the act of third parties. However, in this case, the liability of the lessor is required for the act to be committed by the servant when the act was performed by the servant in the course, or as a result of his employment.

It should be noted that although the lessor does not warrantee the physical trespass of third parties, there are two cases in which the lessor is a warrantor of the physical trespass of third parties. First, is the existence of an agreement between the lessor and the lessor, provided the lessor is a warrantor of the physical trespass of third parties. The second case is realized when, the trespass is not in any way attributed to the lessee and is sufficiently serious to deprive him of the enjoyment of the leased property, the lessee may, in accordance with the circumstances, claim revocation of the lease or a reduction of the rent. In such cases, the lessee may request the dissolution of the contract or the reduction of the rent on the basis that the lessor is liable for the tenant's denial of the use of the premises.

### **Some Forms of Liability of the Lessor for the Acts of the Third Party**

#### **The Liability of the Lessor for the Doorman**

In concern to the lessee, there is a contract binding the lessor to the lessee. Based on this contract, the lessor is obliged to enable the lessee to benefit from the premises. Thus, the liability of the lessor for the acts of the doorman is a contractual liability and not a tortious liability. In order for the lessor to be liable for the doorman, the fault must be proved on his part. The lessor cannot be liable for the thefts of the tenant as long as the doorman is not negligent, the theft is a physical injury not warranted by the lessor, but if there is negligence or derelict of the doorman in the duty of guard, it is different. Not necessarily meaning the liability of the lessor is permanent when the theft occurs, whereas the doorman has many obligations, such as cleanliness, delivery of objects and other obligations [6].

The obligation of the doorman to guard the house for prevention of theft is a commitment to care. In event of theft in the premises, the doorman can deny his liability; thus, denying the liability of the lessor, by proving that he took all necessary precautions to guard the premises, yet the theft still occurred. Although, If the doorman fails to prove this, or if the tenant proves fault or negligence on the part of the doorman, liability is met and becomes the liability of the lessor.

If the two parties in the lease agreed the lessor is not liable for the fault of the doorman, the condition is deemed to be true within the limits of provision of the law for the conditions of exemption from the contractual liability. Since the parties are free to modify the terms of the exemption from liability except for the public order, to require exemption from liability in cases of fraud and serious error.

The liability of the lessor regarding the doorman's acts appear in many cases; for example, if the doorman refuses to hand over correspondence to the tenant, including the letters of the persons who reside with him. This liability also applies to the tenant if insulting.

### **The Lessor's Liability for the Acts of the Other Tenants**

Trespass includes the trespass of tenant neighbors, tenants of the same lessor, whether they reside in a single building, or in a different dwelling owned by the same lessor. It is a matter of the landlord's unit between the tenants and the neighbors, and it applies whether they reside in one building or not.

In this case, the liability of the lessor is the physical trespass of a lessee to another lessee and is considered by the landlord to be the same. Meaning by the physical trespass which falls from one of the tenants to the other and is related to the tenant, as if the tenant prepared the premises for disturbing work such as dance or music, in which case the lessor warrantee this trespass.

### **Liability of the lessor for the acts of the non-tenant**

A tenant may be a neighbor of a lessee than a lessee of the same lessor, who may be a tenant of another lessor, or he may be an owner who benefits from his property. In this case, this neighbor is considered to be a third party for the lessor, so he does not have a lease contract with the lessor until we say that he has followed him, the lessor shall not be liable to the tenant prior to the physical exposure of the neighbor, However, this does not prevent the lessor from remaining a guarantor of the legal exposure of the neighbor. He may claim ownership of the leased property, or may claim to have the servitude right on the leased property, or may deny the servitude right to the premises leased to the premises occupied by the neighbor, or may claim to be a tenant of the leased premises and that the lessee is entitled to use it, in all of the above examples, and in all cases of legal exposure, the lessor remains a guarantor of the exposure of the neighbor [7].

However, if the neighbor's exposure to the tenant is not based on an allegation of a right relating to the leased premises, we are in the process of material exposure from third parties, and therefore the liability of the lessor is not to guarantee the exposure of the

neighbor, for example, a tenant quarrels with the tenant or breaks the windows of the leased rent. In this case, the landlord and the lessee will be in danger. Both will be victims of the physical exposure of the neighbor, and the tenant has the right to be away from the exposure, and as the lessor to be away from it up to the limits of damage.

### **The Tenant's Liability for the act of Third Parties**

Article 692 of the Jordanian Civil law stipulates, "1. The leased property shall be a charge in the possession of the lessee who shall be liable for any deficiency, damage or loss resulting to it from his negligence or trespass and he shall preserve it like an ordinary person. 2. If the lessees shall be several every one shall be liable for the damage resulting from his trespass or negligence." This is matched by the text of Article 530 of the Bahraini Civil law, which states, "(a) The lessee shall exercise due care in the use and preservation of the leased property with the care exercised by a reasonable person. (b) The lessee shall be responsible for any deterioration of or loss to the leased property during his enjoyment thereof which are not the result of normal use."

The tenant is liable for the security of the leased premises towards the lessor and must take care as well as reasonable person in maintaining and using the premises. The tenant's liability is not limited to maintaining the Leased Premises on his own acts; instead, it extends to the acts of his subordinates which cause damage to the leased premises.

The definition of servant considers all those who cause damage to the leased premises as a result of their relationship with the lessee. Such as, if they were not connected to the lessee, they could not have caused such damage, and who may be considered to be a tenant, his wife, children, relatives, friends and guests, which does not constitute a breach of the lease or custom. Tenant followers also include workers, employees, assignees for the lease and sublease tenants.

The Bahrain legislator provided a special case of the tenant's obligations to maintain the premises, through the text of Article (531), "The lessee shall be responsible for damage to the leased property by fire, unless he can establish the cause thereof was not imputable to him. When the property is occupied by several lessees, all such lessees, including the landlord if he lives on the premises, are responsible for the fire, each in proportion to the part he occupies, unless it is proved that the fire started in the part occupied by one of them, in which case that one alone shall be responsible."

Noted, the Bahrain legislator has stressed the liability of the tenant in the event of fire of the leased premises, and the reason for this emphasis is that the fire of the leased premises is dangerous. As stated

above, the Tenant's obligation to preserve the premise from loss due to non-fire is a commitment to care. The tenant has fulfilled his obligation if proven he has taken care as a normal person in maintaining the premises. The tenant cannot escape the liability for himself by proving he has taken care as a normal person, but must prove that the fire was caused by a reason beyond and not imputable to him, in which he can then escape from liability. In addition, the burden of proof is that the legislator has transferred the burden of proof in the case of the loss of the hired premises due to the fire to the tenant, who must prove the beyond reason which is not imputable to him. While the burden of proof was on the lessor in the case of the loss of the rented premises due to another reason than the fire, by proving that the tenant did not make the required care.

Clearly, the tenant's followers cannot be regarded as reason beyond, which escapes him of liability for the loss of the premises caused by the fire. Hence the tenant permits the use of the hired premises by the tenant, or in connection with the contract in any way, makes it impossible for them to be considered as third-party persons, or to be considered as a reason beyond. Accordingly, the Tenant shall be liable for the acts of such servants that caused fire of the premises and its loss.

### **CONCLUSION**

In conclusion, contractual liability for the acts of third parties based as a result of a breach in the implementation of the contractual obligation arising from the act of third parties, which acts led to this breach by mistake or not. As long as the act of the third party used by the debtor in the implementation of the contractual obligation has led to that breach, it does not matter then if it was wrong or not. Hence, the breach of the contractual obligation as a result of that act is considered to be a contractual fault of liability.

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### **CONFLICT OF INTEREST**

The author confirms that this article content has no conflict of interest.

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