

Corruption Prevention for Examination Personnel

When carrying out duties on behalf of the Hong Kong Examinations and Assessment Authority (HKEAA) under the Hong Kong Examinations and Assessment Authority Ordinance (Cap 261) (HKEAAO), examination personnel are required to safeguard the fairness of public examinations. They should stay vigilant about possible integrity risks and malpractices when handling examination-related information. They need to abide by the Prevention of Bribery Ordinance (Cap 201) (POBO) and HKEAAO, as well as the regulations set out by the HKEAA.

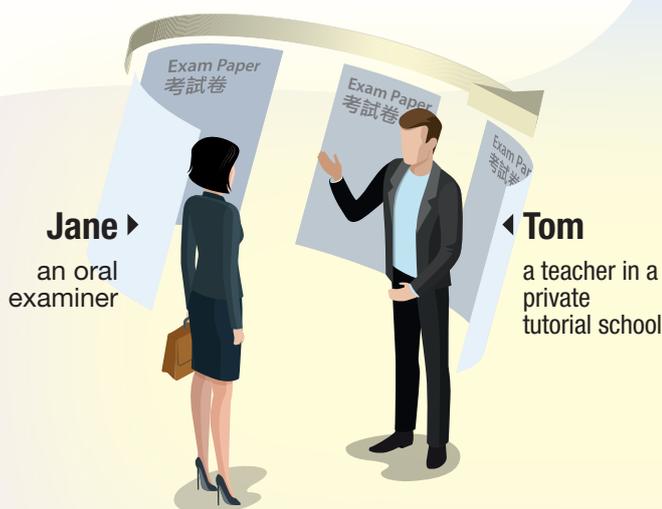


Scenario

Jane and Tom are old college classmates and they meet each other at an alumni gathering. During the course of their conversation, Tom finds out that Jane is now a secondary school teacher and has been appointed by the HKEAA to serve as an oral examiner in the HKDSE Chinese Language oral examination this year.

Tom asks Jane to give him the examination questions, marking guidelines and training materials immediately after the examination for his personal use.

Tom says that, in return, he will get Jane two free tickets for a concert by her favourite singer from his friend, who is working in an entertainment agency.



Analysis

Q1. What is the integrity risk facing Jane?

- ▶ Jane is acting as an agent of the HKEAA in serving as an oral examiner. In this capacity, if Jane provides marking materials to Tom in return for free concert tickets, she is 'accepting an advantage' without the approval of the HKEAA (i.e. the principal) and therefore breaching the Prevention of Bribery Ordinance (POBO).
- ▶ As the offeror of the advantage, Tom will also be guilty of an offence under the POBO.

Prevention of Bribery Ordinance

It is an offence if an agent solicits or accepts any advantage* without the permission of his principal when conducting his principal's affairs or business. The offeror of the advantage is also guilty of an offence.

* Advantage refers to anything of value, including money, gifts, loans, commissions, offices, contracts, services, favours and discharge of liability in whole or in part.

Q2. Would Jane still break the law if she released the examination-related information to Tom out of friendship and did not accept any advantage?

- ▶ Jane was carrying out the important public function of performing examination-related duties and might therefore have committed the Common Law offence of 'Misconduct in Public Office' and/or breached Section 15 of the HKEAAO.

Offence of Misconduct in Public Office

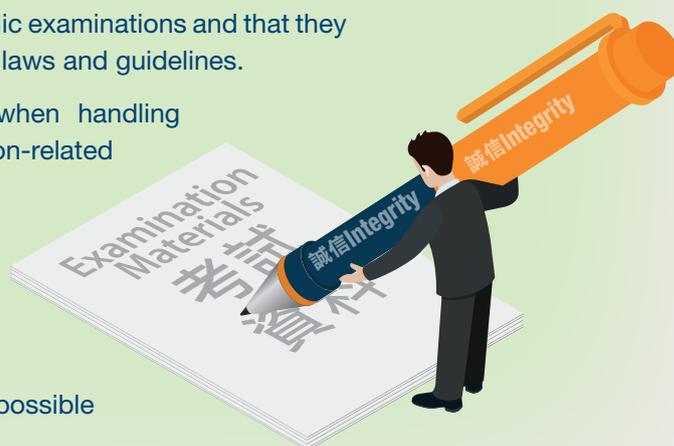
As set out by the Court of Final Appeal in a criminal case, this common law offence involves (i) a public official who (ii) in the course of or in relation to his or her public duties (iii) wilfully misconducts himself/herself by act or omission (iv) without reasonable excuse or justification (v) where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

Breach of Secrecy Provision

According to Section 15 of the HKEAAO, examination personnel are required to preserve the secrecy of all matters in their possession or knowledge as a result of, or when undertaking, the duties for which they are appointed. Specifically, they cannot copy, publish, disclose or use any confidential HKEAA information, materials or documents, in whole or in part, or authorise anyone else to do so, without the authorisation of the HKEAA. The duty of secrecy survives the expiry of the appointment.

Q3. What should exam personnel do to make sure they don't fall into the corruption trap?

- ▶ They need to understand the importance of fairness in public examinations and that they have a responsibility to follow the relevant anti-corruption laws and guidelines.
- ▶ They have to be careful to preserve confidentiality when handling question papers, marking guidelines and other examination-related information.
- ▶ They should observe the rules and regulations set out by the HKEAA when carrying out their examination duties, and ask for clarification if in doubt about what they can and cannot do.
- ▶ They should decline any suspicious offers and report possible corruption to the ICAC.



How to contact the ICAC for making enquiries and reports

-  **By phone :** 25 266 366 (24-hour report corruption hotline)
-  **In person :** ICAC Report Centre (24-hour) or Regional Offices (please visit ICAC Website for full addresses)



ICAC Website

Note: Descriptions and explanations of the relevant laws above are necessarily general. In case of doubt, readers should refer to the original text of the laws or seek legal advice as and when necessary.