

# The Crime of Leaking Test Questions: a Comparative Study

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The exams are of great importance in building a conscious and advanced generation in the field of education. It is the tool on which students are evaluated in the field of education, and they stand at the level of their educational progress, determine their future and make their efforts, either successful or a failure, In spite of the role of examinations in the evaluation of the large number of students, there are many problems that accompany this role and reduce it's safety, and the most prominent of these problems is the leak of test questions that occur before the start of examinations This leads to their spread and violation of their privacy. Whether test questions were deliberately leaked, such as the posting of test questions in social media sites, or unintentionally, due to lack of precautions, such as printing test questions in a non-printing place, the damage is the same.

**Key words:** *Exam, questions, answers, crime, leaking, disclosure, circulation, radio, printing, publishing.*

## Introduction

Test questions are the most widely used measurement and evaluation tools in educational institutions around the world, used to assess student achievement. It is difficult to find an exam whether it is a written, oral or practical examination without it, and despite the importance of the test questions and their role in the scope of the examination process, it has many problems that may lead to the disappearance of its goal.

The leaking of exam questions that we see every year, especially in the baccalaureate examinations, is increasing day after day, although precautionary measures have been taken to prevent this from happening by the Internet being disconnected for many hours, in addition to being considered a criminal offense under legal provisions where the perpetrator is criminally accountable. However, this phenomenon is constantly increasing.



## **The Importance of the Study**

The importance of this study comes from the fact that the violation of the exam questions is one of the many vital topics, because of the increasing importance of this subject and because there is no detailed study about it. All that is written about it does not meet what is required, therefore, this study investigates this subject through the treatment of the ideas it contains, in order to contribute to removing the ambiguity of this topic and to provide modest solutions to the problems it raises.

## **Study Problem**

This study deals with the fundamental problem of the ineffectiveness of the legislative criminal confrontation of the activities and behaviours of the test questions as one of the measurement and evaluation tools used to evaluate students. The exam questions have become seriously threatened, which has led to the disruption of the process of scientific assessment of the student and to solve this problem requires criminal intervention commensurate with the seriousness of phenomena, to achieve the criminal insurance of the test questions.

## **Study Methodology**

More than one methodology will be used in this study, such as the analytical method, by analysing the texts in which the Iraqi legislator was accused of leaking the exam questions and comparing them with other texts in the other Arab and foreign legislations that will be studied in the study: Egyptian law, Moroccan law, French law and Chinese law.

## **Scope of Study**

The scope of the study is determined by examining the criminalisation and punishment provisions for the acts of the exams questions, which are reflected in the leaking of questions according to the Iraqi criminal legislation, as well as the study of the legal provisions related to the same subject in some comparative laws, notably Egyptian law and Moroccan law.

## **Study Plan**

In order to grasp this subject in some detail, we will divide this study into two sections that begin with an introduction and end with a conclusion. In the first section; we will examine the elements of the crime of leaking test questions. The second section will deal with the penalty prescribed for the crime of leaking test questions, and then the conclusion of the study, which will contain the most important findings and recommendations that we will reach, and ask God to help us, he is the guide to righteousness

## **The first section**

### ***Elements of the Crime of "Leaking Test Questions"***

Criminal Jurisprudence went two ways in order to identify the elements of the crime: the first direction, divided the crime into three elements (the physical part, the moral part and the legal part), and based on it about the legitimate part is the illegal character of conduct, the text of criminalisation, and the second direction, seen that the crime has only two parts (the physical part and the moral part), and the owners of this direction to not be considered the legal part of the elements of the crime; because this part according to their view is only a description or a ruling resulting from the behaviour corresponding with the legal rule that criminalise the act. It is only a legal model or a container, which requires that the legal text be excluded from the scope of the elements of the crime, and as the second direction is more likely, we will examine the two parts within two separate demands. In the first, we will present the physical element of the crime of leaking test questions, and in the second, we will explain the moral element of the crime of leaking test questions.

## **The First Demand**

### ***The Physical Part of the Crime of Leaking Test Questions***

The physical part is an embodiment of the inner and psychological case of the criminal, because it works to transfer the inner thought to the outside world through the crime. The physical part has three elements: the criminal behaviour, the criminal result, and the causal relationship between behaviour and result.

In the crime of leaking test questions, the criminal behaviour is centred on leaking action or other acts mentioned by the Iraqi legislator with comparative laws, side by side with the leaking of exam questions as complementary images. The Iraqi legislator mentioned in the law no. (132) of 1996, which states that there are several acts related to breach of the confidentiality of the test questions along with the act of leaking, namely disclosure, announcement and circulation. The Moroccan legislator went in the same direction when he mentioned in the first article of the law of the prevention of cheating in school examinations No. (13) for the year 2016, where there were cases of cheating testing, including the leaking of test subjects. In addition to doing the trade in exam subjects and answers, the Egyptian, French and Chinese legislators have not mentioned the act of leaking the exam as an image of the crime of leaking and only pointed out other images of the same purpose, namely, breach of the confidentiality of the questions of the exam.

The Egyptian law of Anti-cheating in the exam No. (73) for the year 2017 was mentioned in publications, publishing, broadcasting and promotion of the test questions, but in the China's amended Criminal law (No. 14) of 1979, the Chinese legislator only mentioned two acts: the continuation and illegal sale of the test questions or their answers, whereas in the amended Anti-cheating Law No. (23)

Of 1901, the French legislature was limited to one act, namely, the delivery of the examination questions or their answers.

### **First Branch**

#### ***The Subject of the Crime of Leaking Test Questions***

Test questions and answers are the subject of the crime of leaking exams. The test questions were defined as "the scale used to estimate the students' ability to collect information and their ability to express correctly, to understand the relationships between the facts, to think about the causes and consequences, and to apply their information to new situations. The preparation of questions was made on the basis of special criteria to be comprehensive, honest, objective and achieving educational goals.

The test answers are all that are answered by the exam questions, whether the answer is audible or written. Some laws (Iraqi legislator) have pointed out that exam questions are one of the most important topics of this crime if the definition of a criminal in this crime is limited to anyone who leaks, exposes, broadcasts or illegally circulates the questions of the final school exams or the general exam questions, in addition to the quizzes or the final exams that are held in colleges and institutes affiliated to the Ministry of Higher Education and Scientific Research. Without including leaking, disclosure, broadcasting or circulation of test answers are a part of this crime.

However, we can conclude from the leaking of answers without leaking questions that the questions have already been leaked, if the leaked answers are crucial to the questions related to them. Other laws referred to the inclusion of exam answers alongside test questions in the scope of this crime, and went in this direction (the Egyptian law of Anti-cheating in the exam). All those who printed or published the examination questions or their answers were punished, and the same approach was followed by the French legislator when he mentioned the responsibility of anyone who presented the text of the examination or its answer to others.

### **Second Branch**

#### ***The Acts of the Crime of Leaking Test Questions***

**Leaking:** Leaking was defined as a failure to maintain the confidentiality of test questions, by passing them to some students to inform them of their content for reasons that may be material, moral and sometimes personal, which led to significant adverse effects on the rest of the students, for a group of individuals or a single individual, which was incompatible with the educational message.

**Disclosures:** the Jurisprudence defined "disclosure" as: a person is entrusted with a secret by reason of his job or profession and intentionally discloses this secret in circumstances other than those authorised by law or without the consent of the owner, and the Iraqi legislator mentioned this in resolution No. (132) of 1996.

**Announcement of Questions:** The act of declaring the questions assumes it's public nature, therefore, the announcement of test questions means spreading it's content by enabling an unlimited number of people to access it's content through visual devices such as television, or audio devices such as publishing the matter on the radio or through social media sites such as YouTube, Facebook and Twitter. Both the Iraqi and Egyptian legislators have referred to this matter.

**Circulation:** The term circulation has a wide meaning. The circulation of the questions carries more than one meaning; it may involve selling or buying them. Circulation can also mean transferring them between hands, such as buying one of the exam questions and giving it to a colleague, whether for a fee or without. Also they can be traded, in the case of a student's knowledge of the test questions and their transfer to the rest of the students.

**Print Exam Questions:** The Print of exam questions takes place in special places in the university, schools or designated places in the Ministry of Education or Higher Education, but sometimes they may be printed in non-specialised places. Whether it is due to negligence of the author (teacher, professor), where he printed in non-specialised places or by others after leaking by the author.

**Publication:** Publication is defined as the delivery of news and information to others, or telling the facts without any change, alteration or distortion; it is published in a variety of media such as newspapers, magazines, books, newsletters and newspapers as well as social networking sites Twitter, YouTube, Facebook and others.

**Promotion:** The process of putting the commodity in circulation for marketing purposes, including the definition of the consumer of the product and the desire to buy, experience or accept a new idea and innovative, attractive and influential methods, for the purpose of keeping current consumers and attracting other consumers for the purpose of increasing sales or accelerating the sale. It is promoted either directly (face-to-face) as in the case of personal sales or through the use of mass media, such as advertising. The promotion is either to be paid as in commercial advertising or unpaid advertising such as advertising that often comes in the form of a news item referring to the content of particular goods or services. Thus, the promotion of test questions means advertising and marketing through a statement of specifications such as the price and the fact that they belong to a particular subject ... etc.

The Egyptian legislator is unique in mentioning this picture, but we can say that the Iraqi legislator has referred to it implicitly under the name of an announcement. The promotion is wider than the radio as the promotion is done in the sites of social media, in addition to selling face to face, but the radio is limited to the audio and visual devices and social media sites.

**Trade (trade in test subjects and answers):** Trade is intended to sell and buy for the purpose of profit, thus, the trading of test questions is done by selling and buying them. Both the Chinese

legislator and the Moroccan legislator have criminalised the sale or trading of exam subjects and their answers; the Chinese legislator used the term "illegal sale" while the Moroccan legislator used the term "trafficking". If the Chinese legislator has been satisfied with the illegal trade of test subjects and their answers, the Moroccan legislator has explained this in a more detailed manner, pointing out that this act is achieved whether it was done by using traditional or electronic means. Since traditional means are not determined by certain images once the person has come to the market to buy these subjects directly, the electronic means are the use of information and communication technology such as the Internet, mobile phone, television, social media sites, etc.

**Delivery :** the French legislator mentioned in the Anti-cheating in the exam law , the act of delivering the test subjects and their answers. The same is true of the Chinese legislator in the Chinese Criminal Code when he stressed the punishment of those who submit test questions and their answers, as an alternative image of the leaking; the delivery or submission of test questions means hand delivery or submission, while the Chinese legislator in the Chinese Criminal law considered the act of submission as a picture of the crime of leaking test questions, when he pointed to the punishment of each person who delivers or submits questions or answers to the exam. It is intended to submit test questions (the definition and presentation to the people whether it resulted in the delivery of test questions and answers or not).

As for the second component of the physical element, which is the criminal result, the crime of leaking test questions is considered a formality crime rather than a physical crime. As soon as the act of leaking occurs without requiring the result of this act, that is, the crime is achieved once the act has been committed. Whether it led to the spread of the test questions or not, was used or not, or verified by the students or not, all this crime requires criminal activity by the criminal is the act of leaking the exam questions; in terms of the legal significance of the criminal result, the crimes are classified according to this meaning, as dangerous crimes and harm crimes; according to this meaning, we can say that the crime of leaking test questions is a crime of danger, where the legislation that criminalised the leaking of the exam questions did not require any actual harm resulting from the criminal activity committed by the offender until it was criminalised, but the act of leaking was considered a criminal offense in itself, although it did not entail any criminal result.

Risk is defined as potential future harm in the role of formation that threatens an interest or a right protected by law. There are two types of danger, a general danger that directly threatens the public interests of the State and a particular threat to the interests of individuals. We can say that the danger of leaking the test questions is a general danger and a special danger; at the same time it is a general danger because it is an attack that affects the public confidence of educational institutions, and a particular danger because the diversion may affect the interest of some diligent students when other students benefit from the crime of leaking the exam leads to their success and sometimes high rates associated with their outstanding colleagues. The third element of the physical part is the causal

relationship or linking the verb to the result, and the absence of a result in the physical sense does not allow us to discuss the causal link.

## **Second Demand**

### ***The Moral Part of the Crime of Leaking Test Questions***

The crime of leaking test questions is sometimes deliberate and sometimes unintentional; this is what was stated by the Iraqi legislator in Resolution No. (132) of 1996, when it provides for the punishment of the perpetrator of this crime, whether intentional, negligent or arbitrary. Morocco's Anti- cheating Law No. 73 of 2017, the Moroccan School cheating Prevention Law No. (02.13) of 2016, the French Anti-cheating Law (Amendment No. 23) of 1901, and the amended Chinese Criminal law No. 14 of 2016, for the year 1997, did not explain this matter , as it provides for the punishment of anyone who commits it, whether intentionally or unintentionally. Some of them, such as the Egyptian law of Anti-cheating in the exam , have sought a special purpose for this crime in addition to the general purpose (criminal intent).

In order to take note of the details of the criminal intent and the unintentional error in this crime, we will divide this demand into two branches, the first of which is devoted to criminal intent in the crime of leaking test questions, and the second is devoted to the unintentional error.

## **First Branch**

### ***Criminal Intent in the Crime of Leaking Test Questions***

Criminal intent generally requires two elements: knowledge and will, and to clarify them in the crime of leaking test questions, we will address them successively as follows:

**Knowledge :** it's meaning is the state of mind or the awareness of consciousness that precedes the realisation of the will and works to realise things correctly and identical to reality; here we will assume that the offender is familiar with the law, and this knowledge of the law is the basic principle of the Penal law, because everyone is supposed to know the laws of sanctions in a way that cannot be proved the contrary and no one can invoke his ignorance of the law. Therefore, the protestation of the defendant of the crime of leaking the test questions because of his ignorance of the subject, is not legally valid and cannot be an excuse to deny responsibility for him.

**Will :** will is the second element of criminal intent and is superior to the element of knowledge; because it is the essence of intent, as knowledge is not required for itself, but a stage to form the will and a condition for it's development; this means that the will shall go to both behaviour and result in crimes of consequence and to criminal behaviour only in the offenses of pure or abstract behaviour. It is the power inherent in the self, and it's content is perception and freedom of choice; not every will that commits the wrongful act can be condemned by the law, but this will have to be chosen and free. They

must have voluntarily turned to break the law; if they are unable to direct human actions, they cannot be punished.

It should be noted that the Egyptian law of Anti-cheating in the exam referred to the type of criminal intent in the crime of leaking exam questions, where it considered that the criminal intent in this crime, in addition to being a general intention, requires knowledge of the elements of crime and the direction of the will to achieve it. This has a special purpose when the intent or purpose of the behaviour of the printing or the publishing of the exam questions or its answers is cheating or disrupting the general system of examinations.

## **Second Branch**

### ***The Unintentionally Wrong in the Crime of Leaking Test Questions***

The offense of leaking test questions can occur unintentionally when the offender is not intended to leak, broadcast, or circulation test questions. The incidence of this pattern is concentrated in two forms of unintentionally wrong : negligence and default, negligence is the failure of the offender to take the necessary precaution to avoid the occurrence of the wrong result; the error in this pattern is through passive activity, forgetting the necessary precautions or leaving it, such as if the head of the department does not close the box for which the exam questions were placed, which leads to leakage by those who see them.

But the failure (default) means that the perpetrator committed the crime and is expected to carry the results of this act, and did not take precautions to prevent the occurrence of such effects. This type of error occurs through a positive activity, such as a teacher printing test questions in non-print places. However, the possibility of leaking may occur through other unintentional error models and not just negligence and default. It may be done by not observing the laws, regulations and orders, for example, by the professor of the article by referring to some exam points for students before the exam, in violation of the laws and regulations that prevent him from leaking or disclosing exam subjects.

## **The Second Section**

### ***Penalty for the Leaking of Test Questions***

The penalties prescribed by the legislation for this crime vary from original penalties and sub-penalties; to cover the penalties prescribed for this crime, we will divide this section into two demands, the first is devoted to the original penalties, and the second for sub-penalties, and we will follow them successively:

## **First Demand**

### ***The Original Penalties***

The laws in question decided on two original penalties for the leaking of test questions, one of which is a penalty for deprivation of liberty and the other a financial penalty (fine), so we will divide this demand into two branches, in the first we deal with the penalties for deprivation of liberty, and the second is the financial penalty.

## **First Branch**

### ***A Penalty for Deprivation of Liberty***

#### ***Prison***

The Iraqi legislator in ruling no. (132) of 1996 stated that the penalty of the person who committed the crime of leaking the test questions in its strict form, may reach a term of imprisonment of not more than seven years if the perpetrator is a member of the examination committees or is charged with saving, configuring, translating. We would prefer that if the Iraqi legislator did not restrict the penalty by seven years and make it a prison sentence only to open the case before the judge to raise the penalty for seven years in the case that he considered it necessary. The same applies to Chinese Criminal Law, where a person who sells or submits the test subjects or its answers is sentenced to three years' imprisonment and commits a prison sentence of up to seven years in case of aggravated circumstances, but these circumstances and their nature were not mentioned.

#### ***Imprisonment***

Based on Resolution No. 132 of 1996, it is clear to us that the Iraqi legislator has decided to punish anyone who leaks, publishes, transports or debates the final exam questions, the general exam questions and the final examinations that take place in the colleges and institutes of the Ministry of Higher Education and Scientific Research, shall be liable to imprisonment for a period not less than one year. That is, the maximum punishment in this case is five years and the minimum is one year, and it also pointed out that the penalty shall be imprisonment for a period not exceeding one year if the crime committed is negligence and whether committed in the last case by a member of the examination committee or otherwise. However, we find that the punishment of those who commit it, for a period of less than a year is a simple punishment compared to the seriousness of the crime and its impact on the destabilisation of public confidence in educational institutions; so we prefer to raise the penalty to imprisonment for a period of not less than three years. The Chinese legislator also pointed to the imposition of imprisonment for the perpetrator of this crime when not accompanied by tight conditions, The Egyptian legislator also pointed out that the penalty of printing, publishing, broadcasting or promoting test questions or answers is imprisonment for a period not less than two years and not exceeding seven years, Thus, the Egyptian legislator did not differentiate in punishment

and did not increase the penalty in the case of whether the perpetrator of the crime is a member of the examination committees or responsible for its status, preservation, packaging or translation, but equal in the penalty whether the perpetrator of this crime a member of the examination committees or any other person as a student. For example, in addition it does not refer to the punishment of the perpetrator of the crime as a result of inadvertent error. The Moroccan legislator followed the same trend in Morocco's Anti-cheating Law No. (02.13) of 2016, when he referred to the penalty of imprisonment for six months to five years for anyone who leaks test subjects, and the French legislator in the anti-cheating law amended No. (23) for the year 1901, to punish anyone who delivers the subjects of the exam or it's answers to imprisonment for one to three years.

## **Second Branch**

### ***Financial Penalty***

In our view, the combination of the original penalty and the fine is better than the choice between them because of the seriousness of the crime, which the legislator should not be lenient in, but rather emphasise; therefore, we see that the Egyptian and Chinese legislators have surpassed other comparative legislations in imposing a penalty for this crime; the Egyptian legislator left no room for choice between the penalty of imprisonment and a fine.

## **Second Demand**

### ***Sub-Penalties***

Confiscation is one of the most important criminal penalties and it is one of the sub-penalties established for the crime of leaking test questions. The Egyptian law of Anti-cheating in the exam No. (73) Of 2017, cited the penalty of confiscation as one of the penalties imposed on the perpetrator of the crime of leaking test questions and their answers; the judgment required the confiscation of all items in the place of the crime; thus, we can say that the confiscation here is a special confiscation because it focuses on things that may be in themselves the object of the crime, such as test questions or their answers, or used in committing such as electronic devices used in the leaking, printing, publishing or broadcasting or the promotion of test questions and their answers.

The Iraqi legislator, in resolution 132 of 1996, did not provide for the penalty of confiscation; however, pursuant to the provisions of Article 101 of the Iraqi Penal Code in effect, the court may, upon conviction, convict the accused of the offense of leaking the probing questions Whether in it's regular or strict form, to confiscate the seized items that were used in the commission of the said crime, it should be noted that the crime of leaking test questions in Iraqi legislation is considered an offense against honour in accordance with Resolution No. 132 of 1996, among the consequences of considering such crimes is the impossibility of appointing a future perpetrator in public institutions and not being able to run for parliamentary and local elections.

## Conclusion

After we finished studying the subject of "leaking test questions" we reached a set of results and suggestions; we will try to highlight the most important and as follows:

### *First: Results*

Examinations are fraught with problems such as leakage of test questions. Criminal legislation has tried to provide adequate protection for questions by criminalising and punishing anyone who does anything that would harm them.

The material element of the crime of leaking the examination questions is the place of the crime and the forms of the crime. Where the place of the crime differed by the criminal legislation has been some of these legislation the act of leaking test questions or its answer like the French legislator, the Chinese legislator, the Egyptian legislator and the Moroccan legislator. While the Iraqi legislator went in a different direction when he went to criminalise the leak of questions only without answers; but the leak of questions indicates conclusively the leakage of answers whenever these answers were related to them.

The moral aspect of the crime of leaking test questions is different in the scope of criminal legislation. The Iraqi legislator considered this crime of intentional crimes that require general criminal intent based on knowledge and also considered non-intentional crimes; he referred to the punishment of anyone who committed it, whether intentionally or unintentionally, while at the same time emphasising the punishment of those who committed it intentionally. The Egyptian, Moroccan, Chinese and French legislators have decided to criminalise the commission of this crime without referring to it intentionally or unintentionally. This means that they have limited the criminalisation of the act of the perpetrator in the case of an intentional crime because they did not specify the penalty for committing it intentionally.

The penalty for the leaking of test questions varies in the context of comparative legislation between original penalties and sub-penalties; comparative legislation has differed as to the type of the original penalty. Both the Iraqi and Chinese legislators went to make the penalty for imprisonment in the absence of an aggravated circumstance. In the case of aggravated circumstances, the penalty for imprisonment for this crime is imposed. The Egyptian, Moroccan and French legislators shall be punished by imprisonment; comparative legislation referred to the penalty of fine for this crime, and were permissive between it and imprisonment, such as Egyptian legislation or the combination of them, such as Moroccan and French law. The Egyptian legislator of the original penalty of crime added a penalty of confiscation.



### ***Second: Recommendations***

We call on the Iraqi legislator to add another type to the subject of leakage of the exam questions stipulated in Decision No. (132) of 1996, as an addition of the act of printing test questions in non-specialised places because this act is no less dangerous than the other types. The addition of the publication of the test questions as a result of the progress in the means of publication and the development of the means of publication to include all the traditional methods of publishing such as magazines and books ... etc and electronic methods such as publishing in social media sites and modern technological devices. "Anyone who leaks, exposes, sells, publishes, prints, or circulates illegally the questions of the final school exams or the quizzes that take place in the colleges and institutes of the Ministry of Higher Education and Scientific Research.. Will be punished".

We call on the Iraqi legislator to clarify both the concepts of leaking exam questions and the disclosure of leaking exam questions, because of the similarity between the two concepts and the inability to distinguish between them accurately and to prevent confusion between them because of it.

We call on those responsible for combating cybercrime to take legal action immediately after news of the publication of the test questions and their answers has been received, by closing the page or the site in which it was published and exposing the responsible person to legal accountability so as to be an example to others.

We call on the directorates of education and universities to provide each teacher or professor with a special printer to print the test questions, in order to reduce the leakage cases.

We call on the Iraqi legislator to tighten the penalty of the criminal in this crime for a period of not less than three years, in case he is not a member of the examination committees or those charged with the development, transfer, configuration, preservation, packaging or translation of questions. Because the circumstances of the crime may sometimes require punishment for more than seven years as the case of the agreement of more than one person to commit the crime of leaking. So we hope our legislator will amend the text of the punishment to be in the form below "1- Anyone who leaks, exposes, sells, publishes, prints, or circulates illegally the questions of the final school exams or the quizzes that take place in the colleges and institutes of the Ministry of Higher Education and Scientific Research will be punished". 2. The penalty shall be imprisonment if the Criminal is a member of the examination committees or is charged with transporting, preserving, preparing, packing or translating its questions.



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