

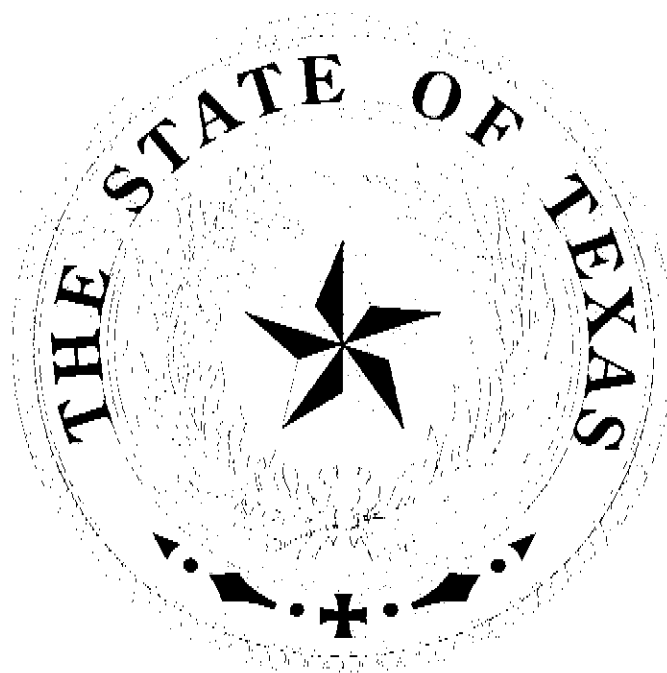
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July 2013

# Criminal Procedure & Evidence

[This Criminal booklet is one part of the Procedure & Evidence session. Both the Civil and the Criminal booklets must be completed during the 90 minute Procedure & Evidence testing session.]



## TEXAS BAR EXAMINATION

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**YOUR ANSWERS MUST BE LIMITED TO THE 5 LINES PROVIDED AFTER EACH QUESTION. ANYTHING MORE THAN 5 LINES WILL NOT BE GRADED.**

## **CRIMINAL PROCEDURE & EVIDENCE**

Buddy and Rob were law school classmates. Recently, Buddy's former girlfriend, Laura, started dating Rob. Buddy was so angry about this that he tried to punch Rob in the face, but Rob easily restrained him and laughed.

One day, Buddy figured out how to hack into Rob's computer over the Internet. Buddy discovered that Rob had written the intimate details of his relationship with Laura in the diary he kept on his computer. Buddy created a web page on an Internet website, posted Rob's diary on the web page, and named the web page "Read My Diary." He used Rob's personal information to make it appear that the web page belonged to Rob. When Rob's law school classmates told him they had read his diary, Rob was humiliated and called the police.

A police officer ("Officer") went to Buddy's apartment to question him. When Buddy opened his front door, Officer entered the apartment, walked across the living room, and entered the bedroom. Officer saw Buddy's laptop computer on his bed, turned the laptop upside down, and discovered that Rob's computer password was written on the bottom of it. Officer left the apartment and subsequently seized Buddy's laptop pursuant to a search warrant.

Buddy then was charged by complaint with the felony offense of online impersonation, and he was arrested pursuant to an arrest warrant.

**1. What is a complaint?**

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**2. What are three requisites of an arrest warrant?**

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You are appointed to represent Buddy, and you and he appear at his examining trial.

3. **What warning must the magistrate give to Buddy before the examination of any witnesses at his examining trial?**

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The magistrate releases Buddy on a personal bond with the condition that he not have any contact with Rob.

4. **What is a personal bond, and what is one way in which it differs from a bail bond?**

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5. **Was the magistrate authorized to impose the condition that Buddy not have any contact with Rob? Explain your answer.**

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When you meet with Buddy, you immediately realize that you should present the defense of insanity at trial. However, Buddy cannot afford to hire a psychiatrist to evaluate him and testify.

**6. Must you forego hiring a psychiatrist because Buddy cannot afford one? Explain your answer.**

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A grand jury is convened to investigate Buddy and the “Read My Diary” website.

**7. Who selects the people who serve on the grand jury?**

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During the grand jury proceedings, Officer is called as a witness concerning the “Read My Diary” web site, and the prosecutor (“Prosecutor”) allows her former law school classmate to question Officer because the classmate is a computer expert.

**8. Was Prosecutor authorized by law to have this computer expert question Officer? Explain your answer?**

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Buddy is indicted for the offense of online impersonation, which is defined as “using the name or persona of another person to create a web page on an Internet web site without obtaining the other person’s consent and with intent to harm, defraud, intimidate or threaten any person.”

You ask Prosecutor for permission to inspect Buddy's laptop computer, but Prosecutor refuses to allow you to do so.

**9. What procedural step can you take to try to get access to the laptop, and what must you show?**

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You and Prosecutor reach a very lenient plea agreement for Buddy in exchange for his guilty plea. Buddy is afraid that the Court will reject the plea agreement and that he then will be stuck with his guilty plea and will have given up his right to a trial.

**10. What advice should you give to Buddy?**

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Buddy decides he does not want to plead guilty. Instead, he wants a trial so that he can show a jury what an evil person Rob is.

**11. What procedural step must you take to allow the jury to sentence Buddy to probation, and when must you take it?**

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Prosecutor tells you that she intends to call Officer as a witness at trial to introduce Buddy's laptop into evidence and to testify that he found Rob's computer password on the bottom of it.

12. **What procedural step, if any, can you take to try to prevent Prosecutor from introducing the laptop and preclude this testimony by Officer at trial? If there is such a step, on what grounds can you take it?**

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Prior to trial, Prosecutor moves to amend the indictment to allege the additional crime of breach of computer security, which is defined as "knowingly accessing a computer without the effective consent of the owner." You object to amending the indictment.

13. **How should the Court rule? Explain your answer.**

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You and Buddy appear for jury selection. During voir dire, a prospective juror states that she thinks that creating a web site in someone else's name is very creative and that she could not convict a person for doing that.

**14. What procedural step, if any, can Prosecutor take to preclude this person from serving on the jury? Explain your answer.**

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Prosecutor tells you she will make an opening statement. You plan to present witnesses in Buddy's defense after Prosecutor's witnesses testify.

**15. Are you required to make your opening statement immediately after Prosecutor's opening statement? Explain your answer.**

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Prosecutor calls Rob as a witness and asks him what he knows about Buddy. Rob responds as follows: "Laura informed me that Buddy is very skilled at hacking into people's computers." You object to this testimony and ask that it be stricken.

**16. How should the Court rule on your objection? Explain your answer.**

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Prosecutor next calls Officer, who was present during plea negotiations, to testify to statements you made during the negotiations. You object to this testimony.

**17. How should the Court rule on your objection? Explain your answer.**

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Prosecutor calls her former law school classmate as an expert witness to testify regarding computer science and how Buddy hacked into Rob's computer and set up the "Read My Diary" web page. You object that this testimony is unreliable.

**18. What three criteria must evidence derived from a scientific theory meet to be reliable?**

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The Court grants your objection to the testimony of Prosecutor's former law school classmate and prohibits the former classmate from testifying.

**19. What procedural step, if any, should Prosecutor take to preserve for appeal the admissibility of her former classmate's testimony? Explain your answer.**

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Prior to trial, you planned Buddy's defense and kept it a secret. At trial, as you begin to introduce evidence of Buddy's insanity at the time of the offense, Prosecutor objects that you should have revealed before trial that your defense was insanity. You respond that your plan to offer evidence of the insanity defense was privileged information prior to trial.

**20. Is Prosecutor correct, or are you correct? Explain your answer.**

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**DO NOT CONTINUE YOUR ANSWER IN THIS SPACE.**

**THIS CONCLUDES THE CRIMINAL PROCEDURE AND EVIDENCE QUESTIONS. CIVIL PROCEDURE AND EVIDENCE QUESTIONS ARE CONTAINED IN A SEPARATE BOOKLET.**