

## 195. Forgery and Uttering: s 488

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### 195.1 Legislation

[Last reviewed: February 2025]

*Criminal Code*

[Section 488](#) – Forgery and uttering

[Section 643](#) – Intention to injure, deceive or defraud

### 195.2 Commentary

[Last reviewed: February 2025]

The offence of uttering was redefined in the 1997 amendments as was the definition of ‘forgery’ in s 488. For offences occurring prior to 1 July 1997, refer to repealed s 489.

The Defendant must have:

- (1) With intent to defraud;
- (2) Forged a document or uttered a forged document.

The document in question need not be complete and does not need to be, or purport to be, binding in law (s 488(2)).

Definitions in s 484 of the *Criminal Code* apply to this offence. This includes a stipulation that ‘document’ does not include ‘trademarks on articles of commerce’.

Definitions of ‘forge’ and ‘utter’ are included in s 1 of the *Criminal Code*.

*Intent to defraud*

Section 643 of the *Criminal Code* provides that the prosecution does not need to prove an intent to defraud any particular person, or an intent to enable any particular person to defraud any particular person.

See *Welham v DPP* [1961] AC 103; [1960] 1 All ER 805 on the meaning of ‘intent to defraud’. An intent to defraud and an intent to deceive are distinguishable (see *Tan v The Queen* [1979] WAR 149). See also *Re London and Globe Finance Corp* [1903] 1 Ch 728, where the difference is explained by Buckley J:

‘To deceive is, I apprehend, to induce a man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit: it is deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action.’

### *Circumstances of aggravation*

The maximum penalty for the offence is increased where the document is of a particular nature (see s 488(1)(a) and (b) under 'maximum penalty'). A definition of 'registration document' relevant to these aggravations is included in s 488(3).

### **195.3 Suggested Direction**

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(This suggested direction only deals with 'uttering'. If the conduct in question is 'forging', modify as necessary).

**The prosecution must prove beyond reasonable doubt that:**

- 1. The Defendant uttered a forged document.**

**'Utter' means and includes using or dealing with, and attempting to use or deal with, and attempting to induce any person to use, deal with, or act upon, the thing in question.**

**It does not matter whether the document is complete or if the document is not or does not purport to be, binding in law (s 488(2)).**

- 2. The uttering must have been done with intent to defraud.**

**'Intent to defraud' means an intent to practise a fraud on another person, it being sufficient if anyone may be prejudiced by the fraud. If, therefore, there is an intention to deprive another person of a right or to cause him or her to act in any way to his or her detriment or prejudice or contrary to what would otherwise be his or her duty, an intent to defraud is established notwithstanding that there is no intention to cause pecuniary or economic loss.**

**It is not necessary to prove an intent to defraud any particular person (s 643).**