

Uttering s 488¹

The prosecution must prove 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 (s 1).

As to the phrase “forged document” the words “forge” and “document” are defined in s 1.²

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.³

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

¹ 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 For offences occurring prior to 1 July 1997, refer to repealed s 489.

² See Forgery s 488.

³ *Welham v DPP* [1961] AC 103; [1960] 1 All ER 805. An intent to defraud and an intent to deceive are distinguishable: *Tan v The Queen* [1979] WAR 149. See *R v Birt* (1899) 63 JP 328 and cf *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.”