

First- who, without
lawful authority,
dishonestly or
fraudulently,



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First- Who dishonestly or fraudulently- (a) Makes, signs, seals or executes a document or part of a document; (b) Makes or transmits any electronic record or part of any electronic record; (c) Affixes any digital signature on any electronic record; (d) Makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other persons, whether such person be living or dead at the time of such alteration; or Thirdly - Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration” Illustrations (a) A has a letter of credit upon for rupees 10, 000, written by Z. A, in order to defraud B, adds a cipher to the 10, 000 and makes the sum 1, 00, 000 intending that it may be delivered by that Z so wrote the letter.

A has committed forgery. (b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the

intention of selling the estate to B, and thereby of obtaining from the purchase money. A has committed forgery. (c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees.

A commits forgery. (d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorises to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. commits forgery. (e) A draws a bill of exchange on himself in the name of without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words:- " I direct that all my remaining property be equally divided between A, and C". A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery. (g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words " Pay to Z or his order" and signing the endorsement. dishonestly erases the words " Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement.

commits forgery. (h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery. (j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery. (k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z.

A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service. Explanation 1:- A man's signature of his own name may amount to forgery. Illustrations (a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery. (b) A writes the word 'accepted' on a piece of paper and signs it with Z's name,, in order that may afterwards write on the paper a bill of exchange drawn by upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to <https://assignbuster.com/first-who-without-lawful-authority-dishonestly-or-fraudulently/>

A's intention, is also guilty of forgery. (c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against . B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it. (e) A a trader, in anticipation of insolvency, lodges effects with for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition. Explanation 2:- The making of a false document in the name of fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery. Illustration: A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Explanation 3:- For the purposes of this section, the expression " affixing digital signature" shall have the meaning assigned to it in clause (d) of sub-<https://assignbuster.com/first-who-without-lawful-authority-dishonestly-or-fraudulently/>

section (1) of Section 2 of the Information Technology Act, 2000.” While Section 463 defines forgery as the making of a false document or false electronic record with intent to cause damage, Section 464 defines the making of a false document or false electronic record sufficient to be brought it within the cover of forgery. The person who makes a false document or false electronic record commits forgery. It is essential that the false document or the false electronic record, when made, must either appear on its face to be, or be in fact one, which, if true, would possess some legal validity. In other words the document or the electronic record must be legally capable of effectuating the fraud intended. The term ‘ document’ is defined in Section 29, IPC to denote “ any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used as evidence of that matter.

” In section 30, IPC ‘ valuable security’ is defined as denoting “ a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right”. It is not necessary that the document should be legal evidence in the strict sense of the word. It is sufficient, if it is intended to be in evidence. Thus, forging a document as a ‘ will’ alleged to be executed by a man will amount to this offence, although all the technical statutory requirements of the ‘ Will have been complied with. The term ‘ electronic record’, according to clause (f) of sub-section (1) of Section 2 of the Information Technology Act, 2000, means ‘ data, record or data generated, image or sound stored, received or sent in an electronic

form or microfilm or computer generated microfiche'. According to Section 464, making a false document or false electronic record means creating of a document or an electronic record or part thereof, execution of the document or the electronic record, or signing of the document or the electronic record fraudulently or dishonestly.

A false document is also said to be made when the signature, seal or date is false. It covers also the cases when the document or electronic record is signed by the accused. The following are the ways in which a false document or false electronic record can be made: 1. By making, sealing, signing or executing a document or a part thereof, or by making or transmitting any electronic record or a part thereof, or by affixing any digital signature on any electronic record. 2. By alteration of a document or an electronic record; or 3. By causing a person, who is innocent of the contents or nature of the alteration done to a document or an electronic record, to sign, seal or execute. Some illustrations of making false documents are: i) Alteration of birth of dates to deprive other eligible persons; ii) Forged document comprehends creating a new document; iii) Making documents through mechanical means; iv) Additions and alterations to documents.

The following are the necessary ingredients for proving forgery related to part of documents: i) The accused made, signed, sealed or executed that part of the document; ii) That part of the document was not made, signed, sealed or executed by or by the authority of the person by whose authority it purports to have been made, signed, sealed or executed; iii) The accused had knowledge of forgery; iv) The accused had the intention of causing it to be believed that the part of the document was made, signed or executed by <https://assignbuster.com/first-who-without-lawful-authority-dishonestly-or-fraudulently/>

or by the authority of a person by whom or by whose authority he knows it was not made, signed, sealed or executed; and v) There was dishonesty or fraud on the part of the accused. To constitute forgery, some damage or injury must be intended to be caused by the false document to the public or to any individual. Thus intention is the essence of the offence of forgery. Causing of actual damage, injury or fraud is not necessary. To constitute fraud an intention to deceive and by means of deceit to obtain an advantage is necessary and if a document is fabricated with such an intention the offence of forgery is committed. Even if a man has a legal claim or title to property, he will be liable for the offence of forgery if he counterfeits documents in order to support it.

An actual intention to convert an illegal or doubtful claim into an apparently legal claim is dishonest and will constitute the offence of forgery. The word 'claim' is not intended to mean to a claim of property only, it includes claim to the custody of children or wife or a claim to be admitted as a student to any course of study or to any examination. Where a false document is made with an intention to cause any person to part with his property it is not necessary that the property must be in existence at the time when the false document is made. The offence of forgery requires two things, an intention to defraud and the possibility of some person being defrauded, although there may not be any person who could actually be defrauded. The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived.

'Injury' is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include a <https://assignbuster.com/first-who-without-lawful-authority-dishonestly-or-fraudulently/>

harm whatever caused to any person in body, mind, reputation or such others. It is noneconomic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. The offence of forgery is committed by a person who fabricated a false document purporting to be a copy of another document for the purpose of the same being used in evidence. Making of document does not mean writing or 'printing' it, but signing or otherwise executing it. The word 'makes' means creates or brings into existence. Making of a document does not mean writing out of the form of the instrument, but the sealing or signing it as a deed or note. A false document does not mean the writing of any of words which in themselves are innocent, but the affixing of seal or signature of some person to the document, knowing that the seal or signature is not his and that that he gave no authority to affix it.

Falsity consists in the document, or part of it, being signed or sealed with the name or seal of a person who did not in fact sign or seal it. Signing or sealing a document completes its execution. Putting a seal to genuine signature to a document which is invalid without a seal is a forgery. In order to constitute an offence of forgery the document must be made dishonestly and fraudulently. Fraudulent Alteration or cancellation of document Clause second of Section 464 deals with fraudulent alteration. A fraudulent alteration of a deed, whether it is a deed executed by himself or by another, amounts to the alterations, for instance, as are contemplated in illustrations (a), (b), (c), (d), (e), (f) and (g) given in Section 464 which are also clear instances of forgeries.

The five material elements common to all such cases are: i) Completion of the deed before its alteration; ii) Its alteration; iii) In a material part; iv) The said alteration being made without lawful authority; v) Dishonestly and fraudulently. It is immaterial whether the executants of the deed was the person who altered it or another, and whether that another was then living or dead, or that the alteration had not, in fact, defrauded anyone in particular. The alteration must be made after the deed has been completed, for before a deed is executed, there may be nothing wrong to alter any portion or clause. However, once a deed or document has been executed, if, it is altered at the instance of the accused, so as to gain some benefit by the alteration for himself or others, and which would affect the rights of the other party, then it would certainly amount to a forgery by alteration. The alteration has to be of a material aspect of the deed or document. A material alteration is one which alters or attempts to alter the character of the instrument itself, which affects or may affect the contract which the instrument contains or of which it furnished the evidence. Any alteration which does not affect the liability of the parties would be deemed to be immaterial as not to wholly vitiate the deed. Procuring signature of person incompetent or not properly informed Clause third of Section 464 deals with the cases where the person making the document is not supposed to know its contents owing to unsoundness of mind or intoxication or deception.

Where the accused obtained a genuine signature upon a false document by inserting the document in a heap of papers placed for signature before the person signed it, the accused has not been considered as committing an offence under Section 464 as no deception was practiced on the person

signing it to prevent him from knowing the nature of the document.

Explanation 1 makes it sufficiently clear that there may be sufficient falsity.

Where a man only signs his own name if he does so in order that it may be mistaken for the signature of another person of the same name. Explanation 2 makes it clear that a document will be forged if it is a false document even in the name of a fictitious person. To support a charge of forgery it is wholly immaterial whether the name forged is that of a fictitious person who never existed or of a real person. It is as much a forgery in the one case as in the other provided the fictitious name is assumed for the purpose of fraud in the particular case under trial. An intention to defraud is an essential ingredient; but it is sufficient to show that there was an intention of defraud generally.

An idol is a judicial person and therefore, forged signature in a document of an idol would constitute the offence of forgery. A person taking an active part in the preparation of a document but no part in the forgery of the name of alleged executants does not commit forgery, but simply abets the offence. If several persons combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals. Each is a principal, though he does not know by whom the other parts are executed, and though it is finished by one alone, in the absence of others. Where a person attests a forged document without knowing the nature of the document he cannot be deemed as an offender. However if a person attests a forged document knowing it to be a forged document, he shall be guilty of offence of forgery under Section 464.

In *Noor Ahemad v. Jagadish Chandra Sen* [AIR 1934 Cal 839], the accused tampered with the electoral rolls. Thus he caused injury to the public. Voting rights of some of the voters were affected. He was held guilty under Section 463. In *L. K.*

Siddappa v. Lalithamma [1954 CrLJ 1235 Mysore), the accused printed marriage invitation cards and distributed with an intention to defame the complainant. The accused was convicted of the offence of forgery under Section 463.

In *G. S. Bansal v. Delhi Administration* [AIR 1963 SC 439], the accused encashed the post office national saving certificates after making necessary endorsements and signature of the deceased. He also attested them. It was held that the accused was guilty of the offence of forgery under Section 463.