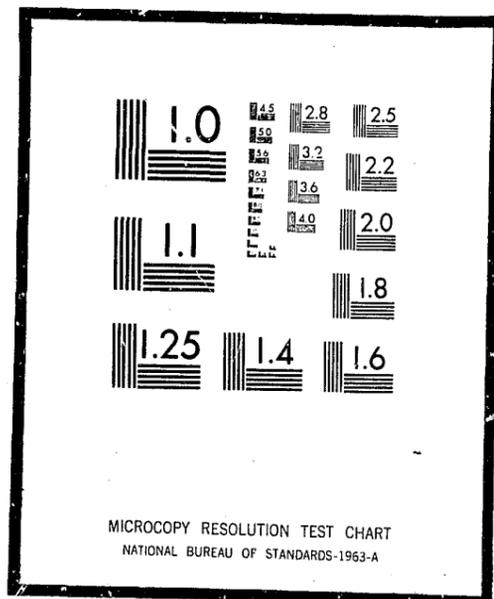


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SOUTH CAROLINA LAW ENFORCEMENT ETV TRAINING PROGRAM

BASIC CRIMINAL LAW

(Forgery)

PART XI

STUDY WORKBOOK

prepared by SOUTH CAROLINA LAW ENFORCEMENT DIVISION • in cooperation with SOUTH CAROLINA EDUCATIONAL TELEVISION NETWORK

SOUTH CAROLINA LAW ENFORCEMENT-^{Educational} ~~NEW~~ TRAINING PROGRAM

FROM CRIME TO COURT

→ "Basic Criminal Law";

Part ~~XI~~ II - Forgery, Study Workbook

ANSWER SHEET

1. is
2. defraud
3. writing
4. making
5. alteration
6. created
7. altered
8. writing
9. made
10. altered
11. legal efficacy
12. intent to defraud
13. typewriting
14. printing
15. engraving
16. mortgages
17. deeds
18. wills
19. tickets
20. court decrees (any order)
21. false
22. applies
23. does not apply
24. no
25. deed
26. padded expense account
27. false entries in one's own account book
28. check wrongfully drawn on back in which drawer has no funds or insufficient funds
29. can be
30. may
31. would be
32. false
33. material alteration
34. would not be
35. would not be
36. would be
37. raising
38. could be
39. will not
40. it is not necessary
41. put into circulation
42. writing
43. false
44. true and genuine
45. known
46. defraud
47. will not

BASIC CRIMINAL LAW

Forgery

The crime of forgery is/is not (1) _____
a common law offense.

Answer: (1) _____

Although forgery is a common law offense, it has been defined by statute in this State. Section 16-351 of the 1962 Code of Laws defines forgery as follows:

Whoever shall be convicted (a) of falsely making, forging or counterfeiting, causing or procuring to be falsely made, forged or counterfeited or wilfully acting or assisting in the false making, forging or counterfeiting of any writing or instrument of writing, (b) of uttering or publishing as true any false, forged or counterfeited writing or instrument of writing, (c) of falsely making, forging, counterfeiting, altering, changing, defacing or erasing or causing or procuring to be falsely made, forged, counterfeited, altered, changed, defaced or erased any record or plat of land or (d) of willingly acting or assisting in any of the premises, with an intention to defraud any person, shall be guilty of forgery and shall be sentenced to be imprisoned not less than one year nor more than seven years and also to pay such fine as may be judged expedient, at the discretion of the judge who may try the case; provided, that if the amount obtained or sought to be obtained upon the forged instrument be less than twenty dollars, the punishment shall be within the discretion of the judge.

Forgery may be broadly defined as the false making or material alteration with intent to (2) _____ of any (3) _____ which, if genuine, might apparently be a legal efficacy of the foundation of a legal liability.

Answers: (2) _____
(3) _____

Another definition would be that forgery is either the fraudulent (4) _____ of a false writing or the fraudulent (5) _____ of a writing which purports on the face of it to be good and valid for the purpose for which it was either (6) _____ or (7) _____ with a design or intent to defraud another person.

Answers: (4) _____
(5) _____
(6) _____
(7) _____

The elements of forgery are as follows: First, there must be a (8) _____; second, the writing either must be falsely (9) _____ or falsely (10) _____; third, the writing that is falsely made or altered must appear to have (11) _____; and fourth, the writing must have been made or altered with an (12) _____ another person.

Answers: (8) _____
(9) _____
(10) _____
(11) _____
(12) _____

With respect to the word "writing", it is not limited to handwriting.

Rather, it would include other forms of writing such as (13) _____, (14) _____, or (15) _____.

Answers: (13) _____

(14) _____

(15) _____

Usually, the offense of forgery will be associated with checks and other negotiable instruments; however, forgery may involve other types of written instruments.

Other examples are (16) _____,

(17) _____, (18) _____,

(19) _____, (20) _____.

Answers: (16) _____

(17) _____

(18) _____

(19) _____

(20) _____

In order for a forgery to be committed, there must be a writing which is (21) _____.

Answer: (21) _____

The writing can be either false to begin with or made false through altering or changing a genuine instrument. It

does not matter which.

It is important that one distinguish between a false instrument and false statements within an instrument.

Forgery applies/does not apply (22) _____ where there is a falsely written instrument.

Answer: (22) _____

Forgery applies/does not apply (23) _____ where there are false statements in a genuine instrument.

Answer: (23) _____

No amount of fraud or misstatement of fact will render a genuine instrument false.

Consider the following situation: Suppose a man, Mr. A, owns some real estate. He executes a deed to that real estate and delivers it to Mr. B, the grantee. In the deed there is a covenant that the property is being conveyed free and clear from all encumbrances; however, there is a heavy mortgage on the property which is held by the local bank. Mr. A knows that his land is subject to this mortgage. Nonetheless, he sells this land to Mr. B, giving him the deed which states, in effect, that the property is not subject to any liens or mortgages.

Has Mr. A, the grantor, committed forgery? (24) _____.

Answer: (24) _____

Forgery will not apply where a written instrument, which is genuine, contains false statements. In the foregoing illustration, the deed which conveys or transfers the property from Mr. A to Mr. B is genuine. Only the covenant which states that the land is not subject to any encumbrances, is false.

In order to convict Mr. A of forgery, it would have to be shown that the (25) _____ itself was false.

Answer: (25) _____

The land is conveyed or transferred by the delivery of the deed to Mr. B even though the deed contains a false covenant.

There are other examples of writings which could be falsely made with intent to defraud, but would not be forgeries because they would be genuine writings.

These examples would include: (26) _____,
(27) _____, (28) _____.

Answers: (26) _____
(27) _____
(28) _____

The most common ways of making a false writing are: One, preparing a false writing and subscribing the name of another person thereto as the maker thereof; two, making a material alteration of a genuine instrument executed by another; and three, placing the name of another person on the back of a genuine instrument so that it appears to be the endorsement thereof.

A forgery may be committed by the use of a fictitious name. The use of either an assumed name or a fictitious name is not forgery unless the person using the assumed or fictitious name fraudulently intended to gain some undue advantage through the use of the particular name.

Forgery can be/cannot be (29) _____ committed if a person uses his own name.

Answer: (29) _____

Ordinarily, this will happen where two persons have the same name.

Where someone tricks another person into signing his own name to an instrument, forgery may/cannot (30) _____ be involved.

Answer: (30) _____

Imagine this situation: As a result of much discussion, A has decided to sign a contract which he has been shown; however, after he has reached this decision, a different contract

is somehow substituted without A's knowledge. A signs the contract not knowing that it was one which he had never seen.

The contract would be/would not be (31) _____
a forgery.

Answer: (31) _____

Where one's signature is procured by fraud, a forgery may have been committed.

The unauthorized alteration of a writing in any material way will change the writing from a genuine instrument to one that is (32) _____.

Answer: (32) _____

Not just any alteration will suffice.

A change in the wording of a genuine writing will not transform it into a false writing unless it amounts to a (33) _____.

Answer: (33) _____

That is to say, the alteration must be such that there is a difference in the legal meaning between the original wording and the changed form. To illustrate: Suppose a check is written in the sum of \$30.00, but there is a blank in the space where the amount is to be represented by figures. As far as the law is concerned, the check is just as good as one which has the figures written into the space provided therefor.

Should some person other than the maker write in figures representing \$300.00, e.g., "\$300.00", the person would/would not be (34) _____ guilty of forgery.

Answer: (34) _____

The reason why forgery would not be committed is that whenever there is a discrepancy between the written words and the figures representing the sum payable on an instrument, the words control. Hence, to write in figures which do not agree with the words will not alter the legal meaning of the instrument. In other words, a material alteration would not result where figures are altered in such a manner that they no longer agree with the words. The check in the foregoing illustration would still be worth \$30.00 regardless of the fact that the figures state that the check is worth \$300.00.

Suppose this situation: A writes a check for \$5.00 and gives it to B. When B gets the check, he changes the figures "\$5.00" to "\$500.00."

B would/would not (35) _____ be guilty of forgery.

Answer: (35) _____

The mere changing of the figures, "\$5.00" to "\$500.00", would not be a material alteration.

Consider this situation: A gives a check to B. The check states in figures only that it is in the amount of "\$40.00." There are no words on the check which express its amount. Just figures. B changes the figures to "\$40,000.00."

B would be/would not be (36) _____ guilty of forgery.

Answer: (36) _____

Here, there are no words expressing the sum that is paid. There are figures only. If the amount of the instrument is expressed only in figures, any change in those figures would be a material alteration.

The most common example of fraudulent alteration is where there has been a (37) _____ of an amount expressed in an instrument so that it purports to represent a larger amount than the original.

Answer: (37) _____

In order for a writing to have apparent legal significance, it must have some value or purpose other than its own existence or constitute a foundation for legal liability or advantage. A check is a substitute for money; a deed to real estate

passes title; a will disposes of property; therefore, a check, deed, or a will represent things of value. Such instruments have some purpose other than to be looked at.

Forgery could be/could not be (38) _____ committed by a person altering a genuine diploma so that the altered diploma purported to confer a degree upon the person altering it.

Answer: (38) _____

The mere fact that one man has signed the name of another to a writing which has legal efficacy will/will not (39) _____ establish the offense of forgery.

Answer: (39) _____

A writing must have been made or altered with an intent to defraud. If one acts in good faith and without an intent to defraud in signing another's name to a writing, he cannot be guilty of forgery.

It is necessary/it is not necessary (40) _____ for someone in fact to be defrauded or damaged in order for the offense of forgery to be committed.

Answer: (40) _____

The actual accomplishment of fraud is not a necessary element of forgery. If the fraudulent intent exists, it is not necessary, in fact, that someone be hurt nor is it necessary that there be an intent to defraud any particular person. All that is required is that a person have the intent to gain some advantage through the use of a falsely written or altered writing.

The word "utter" means to (41) _____
_____.

Answer: (41) _____

One may commit the offense of forgery by uttering or publishing a false writing with an intent to defraud. Basically, the offense of uttering is committed when there is an intent by a person to offer as genuine an instrument which he knows to be false with the intent to defraud another person.

In order to convict one of forgery for uttering a false instrument, five elements must be present.

First, the instrument must be a (42) _____;
second, the writing must be (43) _____; third, the writing must be uttered as (44) _____; fourth, it must be (45) _____ by the person uttering it that the instrument is false; and fifth, it must be uttered with an

intent to (46) _____

Answers: (42) _____
(43) _____
(44) _____
(45) _____
(46) _____

With respect to the fourth element, the person uttering the forged instrument must know that it is false. One is said to know an instrument is false if he has actual knowledge that it is false, if he believes it to be false, or suspects the writing is false but refuses to investigate for fear that he will learn that the instrument was, in fact, falsely made.

Negligence in failing to suspect or to realize that an instrument is forged will/will not (47) _____ establish the requisite knowledge.

Answer: (47) _____

It is unimportant whether the utterer is himself the forger or not, and it is not necessary that the writing actually be passed or otherwise used for forgery to be committed by uttering and publishing. The mere offering of a false writing to another as genuine is sufficient provided all other elements are present.

LAW ENFORCEMENT - E.T.V. TRAINING PROGRAM

"Basic Criminal Law"

Part XI

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Program Objectives

The material contained herein relates to its accompanying TV presentation. It enlarges upon the general topic of "Basic Criminal Law" and deals with Forgery.

STATEWIDE LAW ENFORCEMENT EDUCATION THROUGH TELEVISION

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END

