

FORGERY
G.L. c. 267, §§ 1-8

The defendant is charged with forgery of a (check or order for money) (promissory note) (order for property)¹. To prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

***First:* That the defendant (falsified one or more significant parts of the document in question) (altered one or more significant parts of the document in question) (counterfeited the document in question to make it appear to be genuine);**

***Second:* That the document was or appeared to be a (check or order for money) (promissory note) (order for property)²; and**

***Third:* That the defendant did so with an intent to injure or to defraud.**

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant (falsified) (altered) (counterfeited) a document. It is the document itself – not its contents – that must have been (falsified) (altered)

¹ The District Court also has jurisdiction over the forgery of other documents. See note 1. This instruction may be adapted accordingly.

² See n. 1, *supra*.

(counterfeited). The offense of forgery relates to the genuineness of the document itself, rather than the truth of its contents. A document that contains false statements is not a forged document just because the statements contained in it are false. On the other hand, a document can be forged even if some or all of the statements in it are true.

Falsely Made

To prove the document was falsely made, the Commonwealth must prove beyond a reasonable doubt that one or more essential parts of the document were not genuine. [An example would be where a person forged another person's signature on a stock certificate.]

Altered

To prove the document was altered, the Commonwealth must prove beyond a reasonable doubt that one or more parts of a genuine document were changed in a way that had significance. [An example would be where a person changed a dollar amount, an important date, or a name.]

Commonwealth v. Segee, 218 Mass. 501, 504 (1914) (“The offense of forgery may consist in the alteration in a material part of a valid document by which another may be defrauded.”)

Counterfeit

To prove the document was counterfeit, the Commonwealth must prove beyond a reasonable doubt that the document – even if appearing to be genuine -- was not. [An example would be where a person created stock certificates either for a company that actually existed or for one that did not exist at all.]

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the document in question was or appeared to be a (check or order for money) (promissory note) (order for property).

To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant acted with the specific intention of defrauding another. It is not necessary that the defendant intended to injure or defraud a particular person or entity. To act with an intent to defraud means to act knowingly with the aim of deceiving or cheating another. The purpose is often to bring about gain or benefit either to oneself or to another person or entity. You may examine the evidence

in the case, all of the surrounding circumstances, and any reasonable inferences you draw from that evidence, to help you determine whether the defendant intended to defraud another.

The defendant need not have an intent to injure or defraud a particular person. An intent to defraud anyone is sufficient. *Commonwealth v. Analetto*, 326 Mass. 115, 118 (1950). See *United States v. Leahy*, 445 F.3d 634, 644 (3d Cir. 2006) (instruction on intent to defraud); *United States v. Phath*, 144 F.3d 146, 149 (1st Cir. 1998) (same).

Commonwealth v. O'Connell, 438 Mass. 658, 664 n.9 (2003) (elements of forgery); *Commonwealth v. Apalakis*, 396 Mass. 292, 300 (1985); *Commonwealth v. Segee*, 218 Mass. 501, 504 (1914); *Commonwealth v. Baldwin*, 11 Gray 197, 198 (1858).

NOTES:

1. **District Court jurisdiction over forgery offenses.** General Laws c. 218, § 26 gives the District Court final jurisdiction over “all felonies punishable by imprisonment in the state prison for not more than five years, . . . [and] forgery of a promissory note, or of an order for money or other property.” That grant of jurisdiction encompasses some (but not all) of the documents listed in G.L. c. 267, §§ 1-8. It includes forgery of a “promissory note; or an order . . . for money or other property” (G.L. c. 267, § 1), or an admission ticket (§ 2), a railroad ticket or pass (§ 2), a railroad stamp (§ 4), or “a bank bill or promissory note payable to the bearer thereof or to the order of any person, issued by any incorporated banking company” (§ 8). The District Court does not have final jurisdiction over forgery of the Land Court’s seal (§ 3), a Commonwealth note (§ 7), or a bank bill or traveler’s check (§ 8).

The District Court also has final jurisdiction over a number of forgery offenses found in other chapters of the General Laws, including forgery of historical objects (G.L. c. 9, § 27C), birth, marriage or death certificates (c. 46, § 30), motor vehicle licenses, permits, certificates or inspector stickers (c. 90, § 24B), motorboat number certificates (c. 90B, § 4A), firearms licenses (c. 140, § 131I), and hunting or fishing licenses (c. 131, § 33).

2. **Claim of authority.** Lack of authority is not an element of the offense of forgery, but if a claim of authority is properly raised, the Commonwealth must prove the absence of authority beyond a reasonable doubt in order to prove the element of fraudulent intent. Such a claim must be raised by timely written notice pursuant to Mass. R. Crim. P. 14(b)(3) or is waived. Lack of authority and fraudulent intent may be proved by circumstantial evidence as well as by testimony from the purported maker. *O'Connell*, 438 Mass. at 664-665. See Instruction 3.160 (License or Authority). If the defendant claims authority, the Commonwealth must prove beyond a reasonable doubt that the defendant lacked authority. *Commonwealth v. O'Connell*, 438 Mass. 658 (2003).

3. **Legal Documents.** A legal document is one which is competent as legal proof of the matter therein alleged. *Meserve v. Commonwealth*, 137 Mass. 109 (1884). Some documents obtain their legal status by statute, others by virtue of common law. See *Commonwealth v. Ray*, 69 Mass. 441 (1855).