



**SOUTH AFRICAN POLICE**

**HEAD OFFICE, COMMERCIAL CRIME UNIT**

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**TO:** INWENPOL, WASHINGTON DC, UNITED STATES OF AMERICA

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**ATTENTION:** VERY URGENT

**DATE:** 1990-12-03

THIS TRANSMISSION, WHEN COMPLETE, SHOULD CONSIST OF \_\_\_\_\_ PAGES, INCLUDING FRONT SHEET

**REFERENCE:** 29/61/2/40(229)

**FROM:** SA POLICE (COMM CRIME UNIT)

**MESSAGE:** REQUEST FOR PROVISIONAL ARREST: ROBERT OLIVER WELLS

The above mentioned male, dob February 24, 1939, is wanted in  
this country on 500 counts of forgery, 500 counts of uttering and  
500 counts of possession of forged money.

2. He is currently residing in Johannesburg, Republic  
South Africa on December 21, 1990.



IN THE EVENT OF A PARTIAL OR INCOMPLETE TRANSMISSION, CONTACT THE FAX NUMBER 2721962

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4. The position in South African Law as far as fraud, forgery and uttering is concerned is as follows:

#### 4.1. Fraud

4.1.1. The South African law recognizes fraud as a crime, having adopted the common law position in the Roman Dutch law where *stellionatus* (fraudulent conduct) was regarded as criminal conduct. *Stellionatus* formed part of the Roman Law, was unified with the *crimina falsi* by most prominent writers in the Roman Dutch law, and accepted in South Africa as a separate crime, known as fraud.

4.1.2. Today fraud is part of South Africa common law crimes, and is generally defined as:

"the unlawful making, with intent to defraud, of a misrepresentation which causes actual prejudice or which is prejudicial to another".

This definition is that of the leading work on South African Law Crimes in South Africa, South African Criminal Law and Procedure, Volume II, Second Edition, 1989, Juta and Co., by PMA Hunt and JRL Milton. It is also the definition adopted by the Appellate Division of the Supreme Court of South Africa in amongst others, the following decisions:

R v Jones and More 1926 AD 350 at 352  
R v Davies 1928 AD 165 at 170

4.1.3. In summary form it can be stated that the crime of fraud consists of the following elements:

##### 4.1.3.1. Unlawfulness

The act of the accused person must have been an unlawful one, and it stands to reason that a fraudulent misrepresentation which brings another to act to its real or potential prejudice will normally be unlawful.

##### 4.1.3.2. Misrepresentation

A fact or facts must be misrepresented by the accused person, and in South African law such misrepresentation can be committed through conduct, at times (failing to disclose facts or information which should have been disclosed) or expressed

##### 4.1.3.3. Intent to defraud

In South African law intent to defraud usually has two principal aspects: the actual or legal intent

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tion to deceive and the intention to induce another to alter or abstain from altering his legal position.

#### 4.1.3.3.1. Legal or actual intention

Here the South African law follows English Law and the decision of Derry v Peek (1889) 14 App Case 337 is regarded as the classic statement of the law:

"Fraud is proved when it is shown that a false representation has been made (1) knowingly or (2) without, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in its truth".

The above definition of Lord Herschell has been accepted in numerous South African decisions, R v Nyasa 1949 1 SA 375 (A) at 382-3 being the classic case.

#### 4.1.3.3.2. Intent to prejudice

Again the English position has been accepted in our law. In re London and Globe Finance Corporation Ltd (1903) 1 Ch 728 Judge Buckley decided as follows:

"To deceive is to induce a man to believe that a thing is true which is false, and which the person practicing the deceit knows or believes to be false. To defraud is to deprive by deceit, it is by 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, and to defraud is by deceit to induce a course of action".

In re v Heyne and Others 1956 3 SA 604 (A) at 623 this approach was adopted.

#### 4.1.3.3.3. Causation

There must be a causal link between the misrepresentation and the prejudice, the former causing the latter.

#### 4.1.3.3.4. Prejudice

South African law recognizes two kinds of prejudice, namely real (actual) and potential prejudice as sufficient in cases of fraud. The prejudice need not be proprietary, and potential prejudice will suffice. In R v Heyne supra a description of prejudice was supplied on the lines set out above.

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For the convenience of the Court, I annex hereto a photocopy (marked A) of pages 755 to 78) of South African Criminal Law and Procedure, supra. This text elaborates the short summary set out above. I associate myself with and adopt this extract as a correct statement of the law relating to fraud in South Africa and request that it be regarded as incorporated in this affidavit.

#### 4.1.2. Penalty for fraud

Section 276 of the South African Criminal Procedure Act, Act No 51 of 1977, provides that the following sentences may be passed upon a person convicted of an offence, which will include fraud:

- 4.1.2.1. Imprisonment
- 4.1.2.2. Periodical imprisonment
- 4.1.2.3. Declaration as a habitual criminal
- 4.1.2.4. Confinement to any institution established by law
- 4.1.2.5. A fine.

(Paragraph 4.1.2.1. refers to the sentence of death which may not be imposed for a conviction of fraud).

The nature of the penalty imposed by the Court is discretionary and may, in serious cases, be a combination of, for example, imprisonment (of which a portion may be suspended at the discretion of the Court) coupled with a fine, or it may be determined by the facts and circumstances of the case and the Court's interpretation thereof.

#### 4.2. Forgery and uttering

- 4.2.1. The South African law also recognizes forgery and uttering as crimes. Forgery and Uttering are generally defined as follows:

##### Forgery

"unlawfully making, with intent to defraud, a false document which causes actual prejudice or which is potentially prejudicial to another".

##### Uttering

"in putting off, unlawfully and with intent to defraud, a false document which causes actual prejudice which is potentially prejudicial to another".



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These definitions are also those of the leading work on Common Law Crimes in South Africa, South African Law and Procedure, Volume II, Second Edition 1982, Juta and Co., by PMA Hunt and JRL Milton. It is accepted by the Appellate Division of the Supreme Court of South Africa, amongst others, that these are two distinct crimes. See

Rex v Hyman 1927 AD 35 at 38

4.1.1. In summary form it can be stated that the crime of forgery consists of the following elements:

4.1.2.1. A Document

It is evident from the authorities in South African case law that various items have been considered as documents including negotiable instruments. See

Rex v Hyman 1927 AD 35

4.2.2.1. The Falsity

A "document" is false if it tells a lie about itself. A forged document usually tells a lie as to the person who made the document or authorized its making. The lie can be as to the document's content, as well.

4.2.2.2. Making the Document False

This can be done in various ways including the execution of the whole thing. See

State v Dormehl 1966 (2) Prantice Hall 4 223 (A)

4.2.2.3. Unlawfulness

It is clearly unlawful for an accused person to execute a false document which he is in law not entitled to do.

4.2.2.4. Intent to Defraud

An accused person must have intended to defraud. There is no difference between this element for fraud and for forgery.

4.2.2.5. Causing

A causal link must exist between the making of the false document and the actual or potential prejudice engendered. There is little difference between causation in fraud and causation in forgery, save that in forgery the potentiality of prejudice is usually regarded as existing once the false document

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is made, whereas in fraud a communication is required.

#### 6.2.2.7. Prejudice

Again South African law, as with the crime of fraud, recognizes two kinds of prejudice, namely real (actual) and potential prejudice which will suffice.

4.2.3. In summary form it can be stated that the crime of uttering consists of the following elements:

#### 4.2.3.1. a document

The same principles apply here that apply to forgery and fraud.

#### 4.2.3.2. The quality

The same principles apply here that apply to forgery and fraud.

#### 4.2.3.3. Putting off

The situation in South African law is akin to the position in English law. The South African courts appear to require nothing more to be proved than an accused person having tendered or attempted to tender a false instrument. In essence there must be a communication of a forged document by an accused person to another.

#### 4.2.3.4. Unlawfully

The same principles apply here that apply to forgery and fraud.

#### 4.2.3.5. Intent to defraud

The same principles apply here that apply to forgery and fraud.

#### 4.2.3.6. Uttering

Again the same principles apply here that apply to forgery and fraud.

#### 4.2.3.7. Prejudice

Once more the principles relating to forgery and fraud apply here.

The first of these is the fact that the...  
...of the United States...  
...of the...  
...of the...  
...of the...

*Roberts*

The second of these is the fact that the...  
...of the...  
...of the...

The third of these is the fact that the...  
...of the...  
...of the...

The fourth of these is the fact that the...  
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The fifth of these is the fact that the...  
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