The Concept of Forgery Crime Under United Kingdom Law

مفهوم جريمة التزوير في ظل قانون المملكة المتحدة

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الكلمة المفتاحية : التزوير، الجريمة، التشريع، القانون الإنكليزي، المملكة المتحدة، نية الجريمة، قانون الجريمة.

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Abstract

All world legislations, including the English Law, consider any action that changes the truth contained by a document as a forgery. These legislations incriminated and fought all actions constituting the forgery, though they differed in the methods of treatment and the amount of punishments.

The English legislation dealt with forgery in a way that was mostly different to some extent. The English legislator introduced a wide concept of the subject matter of the forgery crime. Furthermore, this legislation combated all acts that may constitute the forgery crime through a special law for each act may contribute to such crime. These criminal acts would be punished if they were intentional and leading to induce a person to do or not to do an act. Whether they created benefits for the interest of perpetrator or caused harm to a victim.

Introduction

At the beginning, it is important to say that forgery is a dangerous crime in the life of human society, because it affects the daily transactions of people and particularly trust, which is usually considered as one of the essential requirements for establishing a solid legal environment. Therefore, the forgery of documents has been addressed by most states of national laws. Their approach is based on fighting the crime of forging documents under the Criminal Code "Law". More precisely, the countries that adopted this approach have incriminated the forgery crime like other crimes, such as fraud and murder, under the Criminal Law(1). On the other hand, we see the forgery committed against the document is criminalized and addressed by a special law in some countries like the United Kingdom, which has not adopted the approach followed by many countries in addressing forgery crime. Accordingly, forgery crimes are now regulated by the Forgery and Counterfeiting Act 1981(2). The current law addresses extensively this crime, since we find it also regulates the kindred offences such as offences of copying a false instrument(3).

1. Object of the Forgery Crime

As for the subject matter of forgery, a person is guilty if he makes a false instrument or alters in any of its aspect. For this purpose "instrument" is defined by section '8/1' as following:

(Subject to subsection (2) below, in this Act "instrument" means:

(a) Any document, whether of a formal or informal character;

(b) Any stamp issued or sold by the Post Office;

(c) Any Inland Revenue stamp; and

(d) Any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic device or other means).

The Law Commission stated that the document to be the subject matter of forgery must usually contain messages of two distinct kinds:

(The essence of forgery, in our view, is the making of a false document intending to induce a person to accept and act upon the message contained in it, as if it were contained in a genuine document. In the straightforward case a document usually contains messages of two distinct kinds – first is a message about the document itself (such as a cheque or a will). Secondly a message to be found in the words of the document that is to be accepted and acted upon (such as the message that a banker is to pay a specified sum or that property is to be distributed in a particular way). In our view, it is only documents that may convey not only the first type of message but also the second type that need to be protected by the law of forgery)[(4)].

This intention seems to have been thwarted by definition of instrument including "any document". A document may be an "instrument" within the meaning of FCA 1981 even if it is not an instrument in the narrow sense. This is clear not only from section.8 (1) (a) but also from section.8 (1) (d). A device on or in which information is recorded or stored is not necessary an instrument in the narrow sense[(5)].

Anyway, it is immaterial what commentators said on interpretation of that instrument; the only thing to be the most important here is that the notion of the document has changed. Since, this instrument under this Act includes any disc, tape, track and other device on or in which information is recorded or stored by mechanical, electronic means. This extension must be regarded as entirely right in an age when so much documentation is so processed[(6)].

In a related context, that this Act does not make a distinction between informal documents and formal documents when addressing the forgery crime to be committed against these subjects[(7)]*. We find the Forgery and Counterfeit Act 1981 treats these document equally, thus; there is no difference in the kind of offence or amount of the imposed punishment*[(8)].

2. The Criminal Act

As for Act us Reus of the forgery crime in the light of the Forgery and Counterfeit Act 1981, it finds that the criminal act is said by Section.9 (1) of the Act that provides: (An instrument is false for the purposes of this Part of this Act:

(a) if it purports to have been made in the form in which making ". it is made by a person who did not in fact make it in that form ; or

(b) if it purports to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form ; or

(c) if it purports to have been made in the terms in which it is made by a person who did not in fact make it in those terms ; or

(d) if it purports to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms ; or
(e) if it purports to have been altered in any respect by a person who did not in fact alter it in that respect ; or
(f) if it purports to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect ; or
(g) if it purports to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered ; or
(h) if it purports to have been made or altered by an existing person but he did not in fact exist.).

Namely, that an instrument, to be false, must purport to have been made or altered in a way specified in that section, in which it was not made or altered. An instrument is not false if it merely contains a false information; But it must purport to have been made or altered by (or on the authority of) a person who did not make or alter it (or authorise its making or alteration), or by otherwise, purport to be made or altered in circumstances in which it was not made or altered[(9)].

We argue that the physical element required in the forgery crime is done by two ways;

First way: *It is represented by the making of a false instrument. In other words, forgery is done through completely making an instrument was not found before, which is made by a person did not actually make in such form or terms, or that he was not at all authorised to make it in such form or terms.*

Second way *in which this crime to be committed is an alteration of any aspect of the instrument, i.e. a subject matter of forgery is an instrument which is already created. More precisely, the forgery crime is done through altering some of the document aspects such as place at which it was not in fact created. These ways through which the forgery crime to be done are either completely or partially, whether done by a person did exist or did not actually exist.*

3. The Criminal Intent

Commission of the forgery crime is intentionally done, as it cannot imagine that forgery is unintentionally committed. Thus, the mental element or Mens Rea has a great significance because no laws punish a person, who commits a forgery crime without a criminal intention. The Forgery and Counterfeit Act 1981 expressly states this feature through Section.1 providing that: "A person is guilty of forgery if he makes a false instrument, with the intention that he or another person shall use such document to induce somebody to accept it as genuine. By reason of accepting to do or not to do some act to his own or any other person's prejudice"[(10)].

In accordance with this Act, the accused person must have the further intent in addition to the general intent, and the mental element is expressed with intention of using that instrument. This intent of the use is to induce accepting it as a genuine instrument and induce him to do or not to do an act. A belief that this instrument to be false would not be enough unless accepting it led to do or not to do some act to the victim or any other person's prejudice[(11)].

Namely, it is necessary for the prosecution to show that a person has a double intention; an intention to induce somebody to accept the false instrument as a genuine and, an intention that this victim, by the reason of accepting the document, does or not does some act to his own or any other person's prejudice(12).

It is noteworthy that the Forgery and Counterfeit Act 1981 does not respect a nature of the induced, where the forgery crime is committed even though the induced is a machine. In other words, the accused not need to induce somebody to do or not to do an act, since it is enough that he intends inducing a machine in responding to an instrument as if it were a genuine one(13), especially if the machine is programmed to deal with this kind of instrument. Where the intended inducement is of a machine (e.g. a cash dispenser at a bank), the act or the omission intended to be induced by the machine responding to the instrument is treated as an act or omission to a person's prejudice(14).

It can say that this is a positive point accounted to the Forgery and Counterfeit Act 1981(15). As it has seen above, that a mere belief in genuineness of a false instrument is not enough reason for committing the forgery crime. Consequently, the induced person, by the reason of accepting a false instrument, does an act, omission to his own, or other person's prejudice. Namely, there are some effects resulting from that acceptance.

Usually, the instrument is forged with a view to the economic benefit of the forger and the economic loss to a victim. This Act addresses the complications resulting from the forgery crime to some extent in detail; this thing has been done through Section.10 (1), (2). Section 10 (1) states that an act or an omission intended to be induced is to a person's prejudice if, and only if, it is one which, if it occurs:

(a) Will result-

(i) In his temporary or permanent loss of property; or

(ii) In his being deprived of an opportunity to earn remuneration or greater remuneration; or

(iii) In his being deprived of an opportunity to gain a financial advantage otherwise than by way of remuneration; or

(b) Will result in somebody being given an opportunity-

(i) To earn remuneration or greater remuneration from him; or

(ii) To gain a financial advantage from him otherwise than by way of remuneration; or

(c) Will be the result of his having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with his performance of any duty.

Accordingly, this Act addresses two sides of the forgery effects. As known, the forgery crime is committed in order to get a financial benefit for the forger, yet its commission harms the victim. The latter is done through causing: permanent or temporary loss of property of the victim who did or refrained to do some act having accepted that false document. Alternatively, the victim is deprived from opportunity of gaining a few remuneration or a great remuneration if he refrains or to do that act intended to be induced, or he is deprived from an opportunity to gain a financial advantage, otherwise by way of remuneration, what would have been his advantage if the false instrument had not been made.

On the other hand, there is no need to prove any particular victim's loss; since the offence is committed in spite of achieving the financial advantage. More precisely, the financial advantage will usually accrue to the forger or an accomplice, but an offence may be committed though the beneficiary is unaware of the forgery[(16)]*. As in the case, somebody is given an opportunity: to earn remuneration or greater remuneration in his job through making a false certificate, or to gain a financial advantage from the victim, other than by way of remuneration, for instance a false theatre ticket is made in order to gain admission to the party. As well as, this forgery is committed if the acceptance of that instrument will induce a doorkeeper admitting an unauthorised person to enter the premises.*

It is worth mentioning that this Act has considered any act to be committed in such ways is a punishable offence(17), and a person who is guilty by that crime shall be liable on summary conviction to a fine not exceeding the statutory maximum or/and to imprisonment for a term not exceeding six months. While a guilty person of this offence shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years(18).

Conclusion

The English Law has considered the danger of the forgery crime. This is very clear through approach that was adopted by the English legislator. This represented in combatting the forgery perpetrated against the documents regardless their kinds whether they are formal or informal.

On the other hand, combating this crime was based on extending the concept of the document, which is a subject matter of the forgery crime. This concept has been extended to include any form that contains the forged information. The most important here is that the notion of the document has changed. As this instrument under this Act includes any disc, tape, track and other device on or in which information is recorded or stored by mechanical, electronic means.

This document is forged through making a false document or altering one aspect of it i.e. partially. Moreover, the acts forming the forgery crime cannot be criminalised unless they are intentionally perpetrated. The English Act has expressly clarified this characteristic. In accordance with this Act, the accused must have the further intent in addition to the general intent. This private mental element is expressed with the intent of using that instrument. This intent represents in inducing somebody to accept the false instrument as a genuine and inducing him, due to accepting this document, he does or does not do some act to his own or any other person's prejudice. The induced person is required to be a natural person, since the situation would be considered, even if the victim was a machine. This case may be a positive point for the English Law and jurists.

Margins

(1) See in this context for example: The Iraqi Penal Code of 1968, The Criminal Code of Poland of 1997, The German Criminal Code of 1998, Criminal Code of Finland no. 39/1889, The Moroccan Penal Code of 1962, the Egyptian Criminal Code no. 58 of 1937 and the Libyan Penal Code 1953.

(2) This Act is largely based on the recommendations of the Law Commission. The Act replaced earlier legislation, in particular the Forgery Act 1931and the Coinage Offences Act, and abolished forgery at Common Law.

(3) Forgery and Counterfeit Act 1981, Section. 2 provides (It is an offence for a person to make a copy of an instrument which is, and which he knows or believes to be, a false instrument, with the intention that he or another shall use it to induce somebody to accept it as a copy of a genuine instrument, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice).

(4) The Law Commission, "Criminal Law: Report on Forgery and Counterfeit Currency", (Law Com. No. 55), (1972-73 (320), para 22, available at:
http://www.bailii.org/ew/other/EWLC/1973/55.html. (22/07/2013).

(5) Jacques Parry and Anthony Arlidge (et al), Arlidge and Parry on Fraud (3rd Ed, London: Sweet and Maxwell, 2007), p. 283.

(6) Ormerod thinks that to constitute an instrument for the purpose of forgery, the document must do more than merely convey information; it must be of such a nature that the information contained in it as a document is intended to be acted on in some way by purporting to affect the rights or interests of some person or persons. David Ormerod, Smith and Hogan: Criminal Law (12th Ed, Oxford: Oxford University Press, 2008), p. 960.

(7) It is contrary to other laws which have criminalized the forgery crime; we will see that some of them have distinguished, in accordance with character of the document, in classifying this crime and the punishment. An example of these laws is the Iraqi Penal Code No. 111 of 1968.

(8) The Forgery and Counterfeit Act 1981 Section.8 (1) (a) provides (any document, whether of a formal or informal character).

(9) Richard Card, Card, Cross and Jones: Criminal Law (20th Ed, Oxford: Oxford University Press, 2012), p. 401.

(10) Section 1 of the Forgery and Counterfeit Act 1981.

(11) Making a false birth certificate solely to induce the belief that someone comes from a noble family is not forgery. Richard Card, op. cit., p. 402.

(12) David Ormerod, op. cit., p. 966.

(13) The Forgery and Counterfeit Act 1981Section.10 (3) states (In this Part of this Act references to inducing somebody to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to the instrument or copy as if it were a genuine instrument or, as the case may be, a copy of a genuine one); The Forgery and Counterfeit Act Section.10 (4) states that (Where subsection (3) above applies, the act or omission intended to be induced by the machine responding to the instrument or copy shall be treated as an act or omission to a person's prejudice).

(14) Richard Card, op. cit., p. 403.

(15) If we take in our consideration nowadays in the field of the banking operations, where it can see that all financial institutions trend to the adoption of the modern technologies in preforming their activities as a result of the facilities provided by these

electronic alternative. In this sense: The Law Commission, "Criminal Law", op. cit., para. 36.

(16) David Ormerod, op. cit., p. 968.

(17) It is relevant to our study, that this Act has criminalised not only the offence of forgery, yet has criminalised some of the kindred offence, for instant the offence of copying a false instrument under Section.2, the offence of using a false instrument under Section.3, the offence of using a copy of a false instrument under Section.4 and offences relation to specified instruments such as possession of a false instrument, possession or making of materials which has been designed or adapted for forging an instrument under Section.5.

(18) The Forgery and Counterfeit Act 1981 Section.6 provides ((1) A person guilty of an offence under this Part of this Act shall be liable on summary conviction-

(a) to a fine not exceeding the statutory maximum ; or

(b) to imprisonment for a term not exceeding six months ; or

(c) to both.

(2) A person guilty of an offence to which this subsection applies shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years.

(3) The offences to which subsection (2) above applies are offences under the following provisions of this Part of this Act-

(d) section……).

References

Legislations

1. *Forgery and Counterfeit Act 1981of United Kingdom*
2. *Criminal Code of Finland No. 39/1889.*
3. *The Criminal Code of Poland of 1997.*
4. *The Egyptian Criminal Code No. 58 of 1937.*
5. *The German Criminal Code of 1998.*
6. *The Iraqi Penal Code No. 111 of 1968.*
7. *The Libyan Penal Code 1953.*
8. *The Moroccan Penal Code of 1962.*

Books

1. *David Ormerod, Smith and Hogan: Criminal Law (12th ed, Oxford: Oxford University Press, 2008).*
2. *Jacques Parry and Anthony Arlidge (et al), Arlidge and Parry on Fraud (3rd ed, London: Sweet and Maxwell, 2007).*
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4. *The Law Commission, "Criminal Law: Report on Forgery and Counterfeit Currency", (Law Com. No. 55), (1972-73 (320), available at: http://www.bailii.org/ew/other/EWLC/1973/55.html. (22/07/2013).*

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ملخص البحث

لقد عدت جميع تشريعات العالم بما فيها القانون الانكليزي من قبيل التزوير أي فعل يؤدي إلى تغيير الحقيقة الواردة في محرر. وقد جرمت هذه التشريعات كل الافعال التي تؤدي إلى تحقيق التزوير، بالرغم من أن هذه التشريعات قد اختلفت في طرق المعالجة ومقدار العقوبات.

لقد عالج القانون الانكليزي التزوير بصورة كانت على الأكثر مختلفة إلى حد معين، وقد قدم هذا القانون مفهوم واسع لموضوع جريمة التزوير. علاوة على ذلك، كافح هذا القانون ومن خلال قانون متخصص جميع الافعال التي قد تشكل جريمة تزوير وتكون هذه الأفعال الإجرامية معاقب عليها متى ما كانت أفعال عمدية وأدت إلى حمل شخص معين للقيام بفعل ما أو الامتناع عن القيام بذلك الفعل، وسواء حققت هذه الأفعال منافع أو فوائد لمصلحة الجاني أو الحقت اضرار بالمجنى عليه.