

Possession is 9/10ths of the Responsibility

When someone holds goods belonging to someone else, (a 'bailee' in legal terminology), that person owes the other person a duty of care. A recent case shows that such responsibilities should not be taken lightly.

The circumstances were that a company named Matrix had sent 5,000 Bluetooth adaptors worth £375,000 by airfreight to Hong Kong. It used a company called Birkart to ship them. Birkart's subcontractor mistakenly delivered them to a warehouse belonging to Uniserve. They were stolen from the warehouse. Matrix sued Uniserve and Uniserve sued Birkart, Uniserve alleging that there was an implied contract between it and Birkart which was governed by the standard British International Freight Association terms.

Uniserve was not involved in the transaction but became a bailee. It therefore had a responsibility to the owner of the goods (Matrix) to exercise reasonable diligence and skill to prevent the theft.

The legal arguments were many and varied, but the court ruled that as Uniserve was a bailee, it bore the burden of proof to show either that it had taken all reasonable steps to take care of the goods or, if it had not done so, that the failure was not what caused their loss. The judge enumerated a list of failures by Uniserve which persuaded him that had the company acted correctly, the goods would not have been stolen but would have been collected by Birkart and delivered to the airport the same day. Accordingly, Uniserve's procedural failures caused the loss and it was therefore liable to Matrix.

Uniserve's claim against the carrier failed. There was, as a matter of fact, no contract between it and Birkart.

The importance of this case is that it emphasises that responsibilities can arise unintentionally. In similar circumstances, you should make sure that action is taken promptly to advise those involved of the error and ensure that the goods are protected. If such circumstances are a possibility, it is also worth reading your commercial all-risks policy carefully to check that your insurance covers you.