

Submission 56

20 July 2004.

From: Dr Stanley Robinson
Dear Madam,

Re aviation Security

Thank you for the e-mail of 15 June and my apologies for the delay in responding.

The purpose in writing is to raise with members of the committee the issue of the measure of responsibility of carriers for the goods they carry on behalf of passengers. A carrier of passengers' goods is expected to redeliver those goods in the same condition and form (neither additions nor subtractions as when bailed. As a carrier will be carrying those goods as part of a contract then the carrier is a bailee for reward and on such a bailee the law casts the highest duty of care.

Whilst the law casts that heavy duty of care on bailees, no doubt bailees will incorporate exemption clauses into contracts for carriage. To take advantage of an exemption clause the person setting it up must show that the facts fall within the ambit of the clause which (until the Fingleton case) was construed strongly against the person seeking to rely on it. The person relying had to show what happened and then did the clause fit those circumstances. However the Corby affair has highlighted the difficulties of a traveller where the goods are not re-delivered to the bailor by the bailee in the same condition as they were when bailed. Because of the consequences of a carrier not re-delivering the goods as bailed, I submit that such an exemption clause should not be available to carriers. This may have limited effect until accepted by the international regulatory body, but is a step in the right direction and will lessen the concerns of many would be travellers.

The second matter I wish to advert to is this. The present privacy laws are generating an ethos that what a person does is no business of another even though the activities of the other affect the public well-being. Security will be more readily achieved if there was a principle of publicity. This was the Anglo-Saxon principle before the concept of forerunner of the trust was developed to counter land law problems arising out of the Crusades.

And following on from that is this. If there was a rule that, if you could not explain how you obtained money , assets, &, you forfeited the

money etc to the state as was the case , I understand in Hong Kong for the public service, there would be less incentive for a person to endeavour to avoid security measures for the purposes of being paid for so doing. I understand that the Hong Kong provision was effective to reduce corruption.

I hope the members of the Committee find my comments useful.

Yours faithfully

Stanley Robinson