

1025.7 BAILMENT: DUTY OF BAILEE UNDER A BAILMENT FOR MUTUAL BENEFIT

(Negligence: Defined, Wis JI-Civil 1005.)

A bailee for hire (in the absence of a contract to the contrary) owes a duty to exercise ordinary care with respect to the property which is the subject of the bailment. While a bailee for hire is not an insurer of the bailed property against loss, damage, or destruction, a bailee has the same duty to exercise ordinary care with respect to the property which an ordinary prudent person would exercise in the protection of his or her property from loss, damage, or destruction.

COMMENT

This instruction and comment were originally approved in 1974 and revised in 2009.

Firemen's Fund Ins. Co. v. Schreiber, 150 Wis. 42, 135 N.W. 507 (1912); Insurance Co. of North America v. Kriek Furriers, Inc., 36 Wis.2d 563, 568, 153 N.W.2d 532 (1967); Yao v. Chapman, 2005 WI App 200, 287 Wis.2d 445, 705 N.W.2d 272; Bushweiler v. Polk County Bank, 129 Wis.2d 357, 384 N.W.2d 717 (Ct. App. 1986); 8 C.J.S. 401, Bailments, 27 (Bailment for Mutual Benefit); 8 Am. Jur.2d 1092, Bailments § 206.

A presumption of negligence arises when the bailor establishes that the bailed property was damaged while in the possession of the bailee. The bailee then has the burden of going forward with evidence to show that he or she was not negligence. Hildebrand v. Carroll, 106 Wis. 324, 81 N.W. 1003 (1900); Milwaukee Mirror & Art Glass Works v. Chicago, M & St P Ry., 148 Wis. 173, 134 N.W. 379 (1912); Afflerbaugh v. Geo. Grede & Bro., 182 Wis. 217, 196 N.W. 224 (1923).

Where a bailment is solely for the benefit of the bailor, the bailee is only required to exercise a slight degree of care. Smith v. Poor Hand Maids of Jesus Christ, 193 Wis. 63, 213 N.W. 667 (1927).