

1025.8 BAILMENT: LIABILITY OF A GRATUITOUS BAILOR

(Defendant) is a gratuitous bailor in this case; i.e., (he) (she) lent (property involved) to (plaintiff or third person) without receiving or expecting to receive any compensation for the use of (property involved). As a gratuitous bailor, (plaintiff)'s only duty was to inform (borrower) of any defect of which (he) (she) is aware and which might make the use of the loaned property dangerous to the borrower.

COMMENT

This instruction was approved by the Committee in 1995 and reviewed in 2008. Editorial revisions were made to the comment in 2009.

There is no Wisconsin case on this issue. The instruction follows 8 Am. Jur. 2d Bailments, § 162, at 894-95; 46 A.L.R. 2d 404, 427, § 10; and 8 C.J.S. Bailments, § 44, at 275-76. A minority of jurisdictions impose liability on the bailor if he or she should or could have known of the defect in the exercise of reasonable care.

If the property loaned is inherently dangerous, the lender has a further duty to examine the property before lending it.