



## Gratuitous Bailment

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Client Letter Rough Draft



Issue and Brief Answer



In this issue, the court is required to handle a matter in which the client had accidentally left an item belonging to him in a retail store during shopping. The store took responsibility for having the item in their possession; this was done by calling and informing the client that the item was in their possession. Based on the information given from the facts presented by the client, it is clear that a gratuitous bailment had been created by the shop in accepting possession of the missing item and agreeing to keep the item for the client in question. A bailment being the resultant action after an individual gains possession of a piece of property and is subsequently placed in a position of control over the said piece of property. In order to qualify for a bailment, one must demonstrate that the elements of possession and control have been fulfilled by the defendant. A gratuitous bailment is, however, a type of bailment where although possession and control have been established, but the circumstances prevent the bailee from claiming for compensation in the absence of an act of gross negligence.

Fact Statement



The facts presented in this instance demonstrate that the client lost possession of his property in the shop. At this point, the shop acknowledged that they had the item with them, effectively demonstrating that possession had shifted from the client to the shop operators. The shop owners acknowledged this fact through a phone call where they agreed to keep the item for the client to come and collect later on. It was at this point that the item went missing while under their possession. This demonstrates that the shop operators had exercised some level of control



over the item up until the item went missing while still in their possession. This has been developed by precedent that has been set in different courts applying the requirements needed for a gratuitous bailment to have been created between the client and the shop operators.

### Argument



In this specific instance, there are well-developed principles in the case of *Morris v Hamilton*, 302 S.E. 2d 51, 225 Va. 372 (1983), where the court determined the general requirements for the creation of a gratuitous bailment. That there had to be established an element of possession of the specific item in question and that the defendant was in a position to exercise physical control over the property. The discussion around these elements would be centered around specific cases related to the different aspects of a gratuitous bailment followed by a brief comparison with how the facts and decisions of the cases related to the instance presented by the client. These elements are applied conjunctively and as such it essential that they are both established before court tests for the presence of a gratuitous bailment.



In the case of *Morris v. Hamilton*, 302 S.E.2d 51, 225 Va. 372 (1983), the case was brought forth by a plaintiff who had left a wristwatch on the counter of a table in a party that she had attended. In this instance, Morris, who is the defendant in this case later found the watch on the counter and picked up with the intention of returning the watch to Hamilton. (*Morris v. Hamilton*, 302 S.E.2d 51) Morris was, however, unable to locate the whereabouts of Hamilton and subsequently lost the watch at her place of residence. (*Morris v. Hamilton*, 302 S.E.2d 51) It is important to consider that both parties, in this case, were guests invited to a party at a neutral location. The court in making its decision relied on the rule that in order for a bailment to be created there must be delivery by one party and acceptance of the delivery by the second party.






(*Morris v. Hamilton*, 302 S.E.2d 51) As a result of this the duty that arises from a bailment is as a result of the possession of the item as a property of another is a duty to account and take responsibility for the property in question. (*Morris v. Hamilton*, 302 S.E.2d 51)



In this specific instance, Morris had been in lawful possession of the item; however, given her intentions of returning the property and losing it in the process. (*Morris v. Hamilton*, 302 S.E.2d 51) The court declared that Morris was only but a gratuitous bailee, and as a result of this declaration she only owed a reduced duty of care to Hamilton for the returning of the watch. (*Morris v. Hamilton*, 302 S.E.2d 51) As a result of this, Hamilton failed to demonstrate how and in which way Morris could be found guilty of gross negligence, and the case was dismissed in favor of Morris on proving the existence of a gratuitous bailment. (*Morris v. Hamilton*, 302 S.E.2d 51) This case demonstrates how the nature of possession of property belonging to a different person may qualify it for a gratuitous bailment for which the plaintiff, as a bailee, can seek no compensation from the courts.



A similar case discussing possession is the case of *KB CORP. v. Gallagher*, 237 S.E.2d 183, 218 Va. 381 (1977), where the plaintiff had been under a contract of employment with the defendant to serve as a mechanic and provide tools to the defendant. The tools which were meant to be delivered to the plaintiff had been locked in a toolbox that only the plaintiff could access through a key. The tools were then stolen from the defendant's premises while the plaintiff was away on an errand sent by the defendant. The court had noted that the defendant had neither allocated a specific area in his place of business for storing tools and further  had never required employees to leave their tools on his premises for any reason whatsoever. This prompted the plaintiff to make a claim for breach of a bailment agreement by the defendant while he was under his employ. (*KB CORP. v. Gallagher*, 237 S.E.2d 183)



The court began the analysis of this case by describing a bailment as a situation in which a party who is not the owner of the goods is in lawful possession and can exercise control over the property ( *KB CORP. v. Gallagher*, 237 S.E. 2d 183, 218 Va. 381 (1977)). This is followed by a requirement that the property should first be under the exclusive possession of the defendant while the plaintiff is away. The elements of possession and control, in this case, are linked because, in as much as the property was on the defendant's premises, he did not demonstrate any desire to exercise any control over the property. As a result of this the court was of the opinion that in the absence of exclusive physical control over the objects and a desire to act on that control was not sufficient to warrant a bailment against the defendant, and the case was dismissed (*KB CORP. v. Gallagher*, 237 S.E. 2d 183). From these two separate cases we are able to understand that possession over property is demonstrated by showing exclusive control over



the property and a desire to act on that control.



In the case of *Otto Wolff Handelsgesellschaft v. Sheridan Transp.*, 800 F. Supp. 1353 (E.D. Va. 1992), the court discussed the element of control in as much as it is needed to demonstrate the presence of a bailment. The plaintiff brought an action against the defendant seeking compensation for damage to steel bars sustained while the property was on the defendant's vessel for transportation. The plaintiff had purchased the items from a company that subsequently chartered a barge from the defendant to transport the goods to their destination. (*Otto Wolff Handelsgesellschaft v. Sheridan Transp.*, 800 F. Supp. 1353) The cargo was loaded onto the hired barge over a period of several days, where the company had exclusive control of the vessel. The company noted that it rained during the loading of the goods and even described the cargo as having sustained atmospheric rust due to this fact. (*Otto Wolff Handelsgesellschaft v. Sheridan Transp.*, 800 F. Supp. 1353)

The court in this judgment described a bailment as being created when one party has physical control over the property as well as a resulting duty to account for the property as falling under the ownership of another individual. (*Otto Wolff Handelsgesellschaft v. Sheridan Transp.*, 800 F. Supp. 1353) In this instance, in as much as the carrier was in possession of the goods in question, the company was not privy to any agreement with the plaintiff as to warrant duty to arise between the two parties. (*Otto Wolff Handelsgesellschaft v. Sheridan Transp.*, 800 F. Supp. 1353) Sheridan had sufficiently demonstrated that he had no control over the contract of carriage between the plaintiff and the supplier, and without such control then a bailment would not reasonably arise, requiring the defendant to pay for the damages caused. (*Otto Wolff Handelsgesellschaft v. Sheridan Transp.*, 800 F. Supp. 1353)

In order to further understand the requirements necessary to demonstrate the aspect of control necessary to prove the existence of a bailment, we can look to the case of *Zurich American Ins. Co. v. Public Storage*, 697 F. Supp. 2d 640 (E.D. Va. 2010). In the filed suit, the plaintiff claims that the defendants be held liable for the destruction of property placed in storage operated by the defendant. The plaintiff, in the suit, was a physician who had procured the storage space with an intention to store his medications as well as his medical records. He further alleges that pursuant to this he was relying on representation by the defendants that extra procedures had been set up to ensure the safety of business records stored within their facilities. During this period the defendants asked for the keys to the storage unit in order to carry out routine maintenance and repairs at which point it is alleged that the plaintiff's property was unlawfully removed and destroyed while under the control of the defendants. (*Zurich American Ins. Co. v. Public Storage*, 697 F. Supp. 2d 640)

In this case, the court considered the aspect of control over the property by describing the relationship between a bailee and a bailor as one in which there is an element of trust regarding the possession of the property resulting in a duty of care arising from this relationship. (*Zurich American Ins. Co. v. Public Storage*, 697 F. Supp. 2d 640) In this specific instance, even in a circumstance where the goods are not in actual physical control of the property in question, the property is still under their care (*Zurich American Ins. Co. v. Public Storage*, 697 F. Supp. 2d 640). This was the circumstance in this case where although the defendants hired a third party to carry out the routine repairs, this did not negate their duty as storage providers to ensure the safety of the goods belonging to the plaintiff. (*Zurich American Ins. Co. v. Public Storage*, 697 F. Supp. 2d 640) Consequently, the court ordered that the defendants could rightly be found liable for being in breach of bailment and should rightly compensate the plaintiff given that the destruction of the records was an act of gross negligence (*Zurich American Ins. Co. v. Public Storage*, 697 F. Supp. 2d 640).

### Conclusion



In the scenario presented by the client, the client had left his property in the store, which is not an issue of contention. The bone of contention arises as to whether the store and the client had an established bailment relationship that when breached would result in a claim for compensation against the store. For a bailment to be created one must demonstrate that the defendants had possession of the goods in question and that they exercised physical control over the goods. In this instance, possession is demonstrated using exclusive control over the property and demonstrating a desire to act on that control. The store, by acknowledging that they had the item in question and that they would keep it for the plaintiff, is sufficient to demonstrate possession.

On the matter of control over the item, the precedent set by the courts in the cases decided above is determined by situations wherein as much as the item is not under the direct possession of the defendant that the duty of care owed is still maintained. Based on the facts it can be inferred that by informing the client that they had his property the store created an expectation that they would exercise lawful possession of the property while at the same time paying a duty of care to it as the property of the client. The client relied on this promise, and the subsequent relationship created between the store and the client is that of a bailor and a bailee. In this instance, if it is proved that the item was lost due to an act of gross negligence on the store's part then they can rightly be held to take liability for the property.



References

*KB CORP. v. Gallagher*, 237 S.E.2d 183, 218 Va. 381 (1977)

*Morris v Hamilton*, 302 S.E. 2d 51, 225 Va. 372 (1983)

*Otto Wolff Handelsgesellschaft v. Sheridan Transp.*, 800 F. Supp. 1353 (E.D. Va. 1992)

*Zurich American Ins. Co. v. Public Storage*, 697 F. Supp. 2d 640 (E.D. Va. 2010)

# Comment Summary

## Page 1

1. This is APA style. We do not use cover pages or running heads. Remove this page and the running head.

## Page 2

2. The memo should begin the proper information:  
To:  
From:  
Re:  
Date:
3. This is not the client letter, this is the rough draft of the memo.
4. These should be two different sections, not one.
5. For the Question Presented: Let's use the question that was provided and a couple of facts to create the question presented: Was a bailment created when the watch was left at the store?
6. For the Brief Answer: Start the brief answer with the conclusion on whether the bailment was created. Then, the next sentence should explain the two-part test that the court applies. Then, include a sentence explaining how there is (or is not) possession. Then, include a sentence explaining how there is (or is not) control. Finally, provide a summary sentence.
7. This should tell the story of what happened, not be argument. Phrases such as "At this point, the shop acknowledged" are not appropriate here. Instead, just explain the facts: "When Blake was trying on the watches, the attendant offered to place the watch in the safe."
8. This is argument, this does not belong in the fact statement. Just tell the story of what happened in a couple of paragraphs.

## Page 3

9. 1. Gross Disparity

This heading is missing.

10. I am assuming that this is meant to be the overview paragraph: For the overview paragraph start with a conclusion, then the two-part test, followed by how each part of the test was met.
11. This is a lot of fluff that doesn't really tell the reader the conclusion, what test is applied, or how that test has been met (or not met). See my comment at the beginning of the paragraph for how to draft this paragraph.
12. Start with the rule for possession from Morris. Possession occurs when...
13. The facts are explained in a confusing manner. Just be direct and explain the facts: Morris and Hamilton were washing dishes at a party. Citation. Hamilton removed her watch to help with the dishes, but became ill. Citation. Morris grabbed the watch for safekeeping, but later could not remember where the watch had been laid. Citation.
14. This is not the conclusion that should be explained. The conclusion should be on possession: The court determined that Morris had possession of the watch when she picked up the watch for safekeeping. Citation.
15. Citations should not be placed in parenthesis. Remove the parenthesis and place a period at the end of the citation.

## Page 4

16. This should be removed.
17. This paragraph should be removed. As I explained in the instructions, there should be two rule explanation paragraphs and one rule application paragraph in each section - not four rule explanation paragraphs.
18. The paragraph must begin with the rule for possession from KB.
19. Delivery has nothing to do with this - the tools were owned by Gallagher, not being delivered to Gallagher.
20. The final sentence of the paragraph should be the court's conclusion on possession.

## Page 5

21. Remove this paragraph.
22. 2. Control
  - i. See my comments in the possession section - make the same changes in this section as well. The only difference is that in this section we are focused on control rather than possession.
23. The final paragraph of this section should be the rule application paragraph - this is where the two cases explained are compared to the client's facts to reason why the element has (or has not) been met.

## Page 7

24. It is not a scenario, it is what happened to the client.
25. Start the conclusion paragraph with the conclusion on whether the bailment was created. Then, the next sentence should explain the two-part test that the court applies. Then, include a sentence explaining how there is (or is not) possession. Then, include a sentence explaining how there is (or is not) control. Finally, provide a

summary sentence.