

French Huissiers de justice (bailiffs/judicial officers)

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Introduction

French *huissiers de justice* (bailiffs/judicial officers)

The aim of this brochure is to describe the profession of *huissiers de justice* in France, referred to below as bailiffs or judicial officers.

We use the term “bailiff” when referring to the monopolistic activities of the profession granted by the State when acting as officier ministeriel e.g. for enforcement procedures such as eviction.

We use the term “judicial officer” when referring to the wider jurisdiction of the bailiff which includes non monopolistic activities such as amicable recovery.

For the purposes of this brochure the “*huissier*” shall be referred to as “bailiff”.

Currently, 19 out of 27 countries in the E.U have independent bodies of self employed bailiffs.

France has the oldest and perhaps the most developed system and professional organization of bailiffs which is why the French system has been chosen as a reference criterion.

Part 1

A summary of the profession of bailiffs from the *Ancien Régime* to present day

There is an ancient adage which says that bailiffs are as old as the law and as necessary as judges.
If lawyers coexist with justice itself then so do bailiffs.

Avocats of the Court of Appeal, for example, came into existence much later than bailiffs.

The “*procuration ad item*” was only permitted in Roman law with certain restrictions. In France, until the ruling of 15th January 1728, the claimant could only be represented in court by royal permission issued by the Ministry of Justice after paying a special litigation tax.

It is this which is expressed in the maxim “In France, none other than the King pleads by prosecuting”.

It was not until 1393 that the profession of “prosecutor” i.e. *avocat* of the Court of Appeal, was first recognized and not until a letters patent of 22nd July 1572 that the profession was elevated to this status.

The same did not hold true for bailiffs who could already be found in Roman law with varied and often amusing titles such as “*viatores*”, “*exectorum*”, “*latium*”, “*apparitores*”, “*cohortales*”, “*statores*” etc. In our ancient law, this richness of vocabulary was lacking, with bailiffs being described as either “bailiff (huissier)” or “constable” depending on the activity performed.

The historical origins of the bailiff are due to the fact that justice required the parties to litigation to appear in Court and provide evidence of means, and that legal decisions should be enforced. This double requirement has always existed, which explains why bailiffs have always existed in society.

It is informative to look back in history to discover the evolution of the profession before it attained the wide-reaching powers and status which is a characteristic of it today.

Indeed, the antecedents of the bailiff go back so far in time that an entire book would be required to retrace its history. Nevertheless, it is interesting to describe a few characteristic anecdotes from the past to illustrate the development of the profession.

1.1 / Organization under the *Ancien Régime*

Justice is one of the main symbols of sovereignty. It is not surprising, therefore, that the disintegration of royal power in the Middle Ages was accompanied by the break-up of both the state and justice which, up to that time, had been the prerogative of the King. That is why, in feudal society, judicial power was shared between sovereign, feudal lords, the Church and privileged towns.

Under the *Ancien Régime*, the organization of the judiciary was highly complex and the profession of bailiff was subject to an equally complex set of rules resulting from the existence of numerous courts, namely, the royal court, the ecclesiastical court, the seigniorial court and communal justice.

1.2 / Royal Justice

In principle the royal courts were separated into different tiers:

- ▶ Less important cases were dealt with by courts of first degree (*provosties, chaplaincies, viscountcies, vigueries*)
- ▶ More important cases were submitted to *bailiwick*, *seneschalsies* and *présidiaux*. In Paris, this court was named *Châtelet*.
- ▶ The third degree of jurisdiction was represented by Parliament.



In principle, parliamentary decisions could not be appealed. However, the King's Council exercised an almost identical power to that which is exercised by the Supreme Court today (*Cour de Cassation*).

In addition to these courts which could be described as courts of ordinary jurisdiction, several types of courts of specialist jurisdiction also existed: consular judges for commercial cases, treasurers of France for matters relating to the royal domain and highways, judges for water and forests with their highly evocative names: *guieres*, *gardes marteaux*, *maîtres indépendents*, *maîtres particuliers*, hunt captains, etc.

In addition to the different tiers of court, there were also taxation courts as well as courts of the King's palace.

1.3 / Judges – Ecclesiastical Justice

Ecclesiastical justice was organized into a hierarchy as was the Church itself.

Ecclesiastical courts had a *rationae personae* competence which enabled them to hear cases of any type which

concerned members of the clergy or cases in which the weak or vulnerable were involved such as widows, orphans or students. However, it also had a *rationae materiae* competence which allowed them to hear all cases touching upon the interests of religion: marriages, heresies, sacrilegious acts, witchcraft etc.

1.4 / Seigniorial Justice

The jurisdiction of the Lord of the manor was based on feudal links which allowed him to exercise control over his vassals and his non-noble feudal tenants. The seigniorial judge had the right to judge all those on his land.

1.5 / Communal Justice

Some towns in France obtained their freedom and independence. This privilege was accompanied by the setting up of communal courts known as "Municipal Magistratures".

In order for a petitioner to refer a matter to these courts and enforce decisions, officials were needed who could enjoy undisputed authority. These officials were the ancestors of modern day bailiffs and they were known as 'constables'. In addition to this, reliable and attentive officials were needed to ensure that court hearings took place and that their decisions were enforced. These officials were known as bailiffs.

In the very beginning, these two different activities corresponded to the clear difference between the 'bailiff' and the 'constable'.

Bailiffs drew their name from the word "*huis*" meaning "door" in latin and were originally responsible for events inside the courtroom including maintaining order, opening and closing doors for litigants and announcing their names in Court.

The constables for their part were more particularly responsible for serving writs and enforcing Court orders.

The nature of the constable's role, however, meant that bailiffs spent most of their time in court. In addition, their title was considered to be prestigious which was the cause of a certain amount of envy and jealousy. This is why the title of 'bailiff' was increasingly given to officers of the larger courts, while the title of 'constable' was given to the officers of the lower courts.

In this way the *Châtelet* in Paris came to have five categories of bailiff:

- Courts bailiffs
- Bailiffs on horseback
- Pikestaff bailiffs
- Auction bailiffs
- Dozen bailiffs

History tells us that in 1327, Agnes of France, Duchess of Burgundy, the Regent of the Kingdom of France passed a decree stating that bailiffs on horseback should have "a fine horse of a value of at least 100 pounds, a plentiful supply of weapons, and a pikestaff of a value of at least 50 pounds".

The pikestaff was used by pikestaff bailiffs and was a symbol of authority. It consisted of a small round ebony baton, thirty centimeters long and decorated with copper and ivory.

A law was enacted by the King in 1568 that bailiffs had the duty upon serving a person with a writ, to also physically touch that person with a pikestaff. Once the bailiff had done this, that person was obliged to show obedience and submission, with the severest punishments applied for non-compliance.

Auction bailiffs are the ancestors of the modern day auctioneers, and the dozen bailiffs were the guards of the Provost (local tax collectors).

Finally, a body of bailiffs existed in Parliament who enjoyed significant and quite extravagant privileges. In addition to this, the senior bailiff to the Parliament of Paris was customarily ennobled by the Sovereign.

The bailiff therefore was the symbol of royal authority and as a result enjoyed special protection.

To cast a slur on a bailiff was to throw scorn on royal authority. Furthermore, justice was unforgiving for those who resorted to acts of violence against bailiffs.

For example the Count of Beaujeu, who threw a bailiff through a window, had all his land confiscated by the Crown as a result.

In the 15th century, the land which the king of England held in Aquitaine was confiscated and reunited with the Kingdom of France. The reason given was that the Prince of Wales had prevented a bailiff from drafting a formal document of land transfer.

Louis XII even put his arm in a sling, to express his solidarity with a bailiff who had been attacked while carrying out his duties.

1.6 / Admission requirements under the *Ancien Régime*

Under the *Ancien Régime*, from the 15th century onwards, the recruitment of bailiffs was subject to the imposition of moral and intellectual standards on recruits.

Certain types of profession such as innkeepers and members of the clergy were prohibited from becoming bailiffs. In addition, constables and at a later date bailiffs, were required upon recruitment to deposit a form of security which could be a substantial amount of money. They were also expected to have a certain level of intellectual knowledge and cultural awareness.

Even though, at that time, bailiffs were not required to be able to read and write, they were expected to have enough intelligence to verbally serve their writ and report back to the judge.

It was only from the 15th century onwards that certain Parliaments required that their constables and bailiffs should be able to read and write and it was Louis XIV who, in 1667, made this an essential requirement for all bailiffs and constables in his kingdom.

Additional laws, made in 1556, 1667 and under Napoleon 1st in 1813 were applied to further regulate the profession of bailiff.

A law enacted on 2nd November 1945, following the end of the World War II, forms the basis of the modern bailiffs' profession.

Part 2

An independent professional status

Since the Middle Ages, the bailiffs' profession has been independent.

Under the Monarchy, during the revolutionary period in 1792 and even under the First Empire, the profession always benefited from an independent status, undoubtedly because the bailiff's activities usually required the payment of taxes, which have always been an important source of revenue for the Treasury.

The status of bailiffs is highly complex for those unaware of the administrative organization of France.

The bailiff, as a self employed member of a 'liberal profession', is also a public and ministerial officer while at the same time being a legal officer.

2.1 / The Bailiff as a member of a 'liberal profession'

In France and in many other civil law jurisdictions, the civil service does not, as is the case in some countries, have all the prerogative powers generally attributed to the State. This feature can be particularly illustrated by the power transferred to bailiffs to enforce orders made in civil cases by the courts.

Enforcement, which in many countries is a role traditionally belonging to the civil service, is, in France, given to bailiffs, although this role is shared with a category of civil servant entrusted with the task of recovering unpaid tax. Nevertheless, the principle remains that court orders are enforced by bailiffs, who, in this capacity have a monopoly on their enforcement, except for the recovery of unpaid taxes where the bailiff works in tandem with certain Treasury civil servants.

The 'liberal' aspect of the profession gives the bailiff total independence in the enforcement of judgments. The bailiff is not subject to any hierarchy or higher authority, other than potential sanctions professional misconduct.

Bailiffs, who are nominated by the Ministry of Justice, are self employed professionals in the strictest sense of the word. They manage and run their own business in the same way that a director runs a company, employing a large number of qualified staff and using up to date office, computer and communication equipment.

2.2 / The Bailiff as a legal officer

The bailiff is a legal officer holding an "office".

To get a better understanding of the notion of "office", we need to go back to the 15th century.

At that time monarchs, who were involved in interminable wars, found themselves forced into spending in excess of the budget of the kingdom. As a result, and in order to finance these ruinous campaigns, the king granted offices, in exchange for large sums of money.

Other offices which were created by the King at that time included regimental captain and magistrate. Both of these offices have since disappeared.

Throughout the centuries, the ownership of the offices has survived in different forms to such an extent that it is now considered as a part of the property of its holder.

As such it is a possession which can be transferred and sold in the same way as a business.

This right to sell the office, which is given to the bailiff, has led to the expression "the venality of office".

The bailiff as a legal officer has the right to choose, in exchange for the payment of a fee, a successor. The successor must have the qualifications and other conditions necessary to carry out the office of bailiff.

2.3 / The Bailiff as a public officer

When bailiffs are acting as enforcement agents while carrying out seizures or evictions, by representation they are performing an act on behalf of the State.



Because the bailiff is acting as a public officer, s/he may request the assistance of the police should the circumstances demand it. Force may be required in some cases to overcome either the obstruction or the resistance of a debtor.

Only a limited number of "liberal" professionals are public officers: bailiffs, *notaires*, auctioneers and Clerks of the Commercial Court.

2.4 / The Bailiff as a legal representative

The bailiffs' duties are not limited to the power of enforcement of civil judgments.

- Bailiffs have a monopoly on the service of legal documents.
- Bailiffs and auctioneers have a monopoly on sales of movable property at public auction.

- Bailiffs recover private debts.
- Bailiffs draw up reports or statements of facts at the request of the court or private individuals.
- Bailiffs can also represent the parties in some courts.

In addition, bailiffs are responsible for the organization and running of hearings in court and, under the authority of the judge, ensure good order in the courtroom.

During a hearing the judge may appoint a bailiff for consultative duties or to prepare a statement of facts in order to clarify the judge's understanding on a particular point.

In both cases above, the bailiff is acting as a legal representative which is another duty performed by bailiffs in their role as public and legal officers.

Part 3

The activities of the bailiff

The bailiff's special legal status offers a wide variety of professional activities, some are monopolistic in nature while others are in direct competition with other professions.

As well as these 'traditional' activities, the bailiff may also carry out ancillary activities which have no direct connection with legal services.

Over the years, bailiffs have widened their areas of activity and in so doing have expanded their fields of competence. The bailiff may now draft and deliver orders to pay in matters concerning dishonoured cheques.

In this way the bailiff may, in the same capacity as a *notaire*, draft a range of legal documents which fall within the category of enforcement orders.

3.1 / Main traditional activities

These either fall within or outside the scope of the bailiff's monopoly.

Monopolistic activities

The two main monopolistic activities are:

1. The service of documents.
2. The enforcement of Court orders.

As such, the bailiff plays an essential role in the French judicial system, participating in the enforcement of justice before and after the Court decision has been made.

Service of documents

The objective is to bring documents, mainly judicial in nature, to the attention of an answerable person. Either the bailiff or their clerk acting under oath will go to the domicile of the answerable person to hand over a copy of the document(s).

The bailiff authenticates the contents of the document. In this way the document may, then, only be challenged if

there is evidence that it is false. This is a rare and unusual procedure.

The bailiff drafts the documents and assumes responsibility for them.

In this capacity, the bailiff must verify the quality of the documents and their contents with reference to the legislation in force and the procedures which are being considered.

The serving of a document in person is always the preferred method, although alternative methods exist to ensure that the system is not paralyzed.

In the event that the document cannot be served on a person, the bailiff may hand it over to either a person present at the address of the interested person, their place of work or even keep it at the bailiff's office. In this way the interested person may collect it once they have been made aware of it by the bailiff.

Some of these documents are issued by the court while others are extra-judicial in nature.

Judicial documents

These are documents which are directly connected to court proceedings eg. a summons relating to proceedings in a court.

These documents are subject to strict rules of service which the judge will ensure are followed.

Any breaches of service may lead to a judge declaring nullity of process which may result in the bailiff incurring personal liability.

Extra-judicial documents

In this category may be included documents such as a notice given to terminate a lease eg. where the owner of a property informs the tenant of their decision not to renew a lease.

We also have orders to do (something), or, not to do (something), or orders to pay. In these circumstances, the



aggrieved party or the creditor will prepare the order eg a final demand for payment which the bailiff will serve on the debtor or are issued to force a person either to fulfill an obligation or to restrain that person from performing certain actions.

Very often this is a method used to avoid court action, though it is also often the starting point of a dispute.

Enforcement of court orders

Only bailiffs may enforce court orders. When doing so they have a duty to advise both parties (the debtor and the creditor).

The bailiff is responsible for the enforcement procedure, and, with the agreement of the creditor, chooses the most appropriate procedure. They are then fully responsible for its enforcement.

If the bailiff considers it is necessary, and if the law allows it, the bailiff may request any authorizations which they believe necessary.

The bailiff then presents to the judge the measures required for enforcement to be performed. In the event of difficulty, particularly when dealing with any force required to enter into a private home, the bailiff may ask to be accompanied by preferential witnesses (police officer, *gendarmes* [military police officer] etc.), and in the event of resistance, may then ask the police to intervene.

Enforcement is a process which starts by the drafting of an enforcement document and is completed, if necessary, by the sale of the debtor's assets.

Before any enforcement measures are taken, the bailiff may, either through a court order or by the terms of a private contract such as a lease, carry out protective measures, mainly relating to the confiscation of movable property, the freezing of bank accounts or the immobilization of vehicles.

In the event of a dispute, the bailiff may submit a case to a judge (*juge de l'exécution*) and appear in court in person in order to obtain a judgment to resolve the dispute.

3.2/ Activities outside the monopoly

The bailiff is one of a number of professionals authorized by law to give legal consultations and to draft private agreements.

These activities, which are outside the bailiff's monopoly, may be categorized as follows:

1. The drafting of documents.
2. The recovery of debts by private agreement.
3. Filing claims and representation of clients in court.
4. Sale by auction

The drafting of documents

This refers to the drafting of private agreements, statement of facts and consultations rather than to authenticated instruments of a judicial nature.

Private agreements (*acte sous seing privé*)

The bailiff is authorized to draft any type of private agreement and as such frequently draws up leases for private, commercial and rural property.

This type of work also allows the bailiff to participate in business as well as private matters.

Statement of facts (*constats*)

This aspect of a bailiff's work is very intensive. These statements of facts enable evidence to be preserved in later proceedings. Consequently, it takes place generally before litigation has commenced. The advisory capacity of the bailiff is very important on these occasions.

The bailiff drafts a description of a situation at a given moment in time. This description is objective and impartial. One of the benefits of using a bailiff is that their recorded statement of facts is drafted professionally and is based on the bailiff's independence neutrality and professionalism.

A bailiff can draw up statements of facts at the request of either individuals or judges. In the latter case, the bailiff may also provide the judge with additional information which the judge can use in order to decide the case. For the judge, the statement of facts is now (since December 2010) considered as acceptable evidence unless refuted by more persuasive evidence to the contrary.

The statement of facts may be drawn up jointly by both sides; this is preferable however there is no obligation to do this.

Consultations

The bailiffs' consultations with clients may be either written or verbal and relate to a wide range of subjects.

The recovery of debts by private agreement

The recovery of debts may be negotiated between the creditor and the debtor by private agreement using methods which are left to the bailiff's discretion, while at the same time fully respecting the profession's code of ethics.

Filing claims and representation of clients in court

For several years now bailiffs have been authorized to represent their clients before the Commercial Court in order (a) to obtain judgment and (b) to file petitions before certain judges.

Representation before the Commercial Court

This form of representation has existed for several years and allows the bailiff to act on behalf of one of the parties to litigation.

Claims before the courts

This option is open to the bailiff before any court other than those where representation is the monopoly of the lawyers (*avocats*). Such is the case in the High Court (*Tribunal de Grande Instance*).

This is also the case for simplified injunction proceedings resulting in payments being made (*injonction de payer*). In such cases, the bailiff is authorized to file claims for debts up to 10.000 € in the civil courts.

In order to avoid a situation where, for example, the debtor attempts to transfer assets outside the jurisdiction, protective measures may be taken to protect them on the authorization of the enforcement judge or the President of the Commercial Court.

Sale by auction

The bailiff may sell movable property by auction. These sales take place either voluntarily or by judicial enforcement.

3.3 / Ancillary activities

Apart from the main activities, many bailiffs also offer certain ancillary activities in order to generate more income for the office.

Ancillary activities may be justified by the need to find a financial balance in the management of an office and are generally found when the level of principal activities of the bailiff's office is low.

By carrying out these ancillary activities, bailiffs are guaranteed sufficient income.

These ancillary activities include:

- Real estate administration
- Insurance agency and offering mediation services

Part 4

The bailiff's duties

In order to consider the bailiffs' duties, we need to make a brief analysis of the fundamental concepts which govern the status of "legal officer". By doing so, we will be able to define the role as well as determine the privileges.

Both a structured, professional organization (the law of 1945) and the observation of strict codes of ethics are needed in order that these privileges can be legally guaranteed. Indeed, a profession which is invested by law with prerogatives of public power must be equipped with disciplinary measures which can be used against members in breach of the code of conduct.

In addition to the legal qualifications, a bailiff must either acquire an office (*étude*), or a shareholding in the office.

This is one of the special features of the practice of a 'liberal' profession in accordance with French law.

However, it is now possible, since the law of 2010, for the bailiff to exercise the profession as an employee, rather than being self employed.

Although the roots of the profession can be found in the distant past, the modern structure of the organization dates from the law of 2nd November 1945.

4.1 / Privileges granted to the bailiff by law

In exchange for the privilege of monopoly which is granted for the service of court documents and the enforcement of court orders, bailiffs are required to offer their assistance when requested, either by judges or individuals.

Rights of office

Without being the owner of the office in the legal sense of the term, bailiffs have the right to propose a successor with the agreement of the Ministry of Justice. This right is called the 'right of representation'.

The right of representation exercised by bailiffs enables them to dispose of their office by sale.

The *numerus clausus*

The *numerus clausus* rule means that a strict control is imposed on the number of offices situated in a given area by the Ministry of Justice in order to ensure that the local population is adequately provided for by the optimum number of bailiffs.

The *numerus clausus* also relates to the status of the bailiff, who, as the possessor of a small part of public power is subject to the direct authority of the State.

Furthermore, because of the *numerous clausus* rule, bailiffs (except in special cases), are tied to a local jurisdiction which is part of a system known as "territorial competence". In etymological terms, the expression "*numerus clausus*" takes on a discriminatory connotation which implies the need to limit the number of bailiffs. In order to find the origins of the *numerus clausus* we have to go back to the *Ancien Régime* when offices were first created.

At that time, the number of constables or bailiffs able to hold the office of 'enforcement agent' was already limited, with examples of instances where the appointment of new constables or bailiffs beyond the fixed quota was annulled.

Under Napoleon I, the decree of 14th June 1813 reintroduced the status of bailiff. Nevertheless, certain revolutionary laws passed in 1792 were retained, in particular those concerning the obligation to exercise the profession in a specific territorial 'jurisdiction'.

The number of bailiffs required was initially calculated at Imperial Court level, based on the needs and the size of the territorial 'jurisdiction'.

Today the situation is more or less the same, however the number of bailiffs required is now decided by the Ministry of Justice after consulting the bailiff's professional body (CNHJ)



The law of 29th November 1966 allowed bailiffs to form non commercial professional companies without calling into question the existence of the *numerus clausus*. This law encourages the appointment of new bailiffs who today number approximately 3,100.

Authenticity of legal documents

Legal documents drafted by bailiffs within the scope of their legal authority are considered to be authenticated deeds which cannot be disputed without persuasive evidence to the contrary.

The right to request the assistance of the Police

Court enforcement orders give bailiffs the right to request the assistance of the Police if necessary.

Protection of the bailiff

The bailiff, by law, is protected against aggression by third parties to a greater degree than ordinary citizens

by virtue or their status as "*officier ministriel*". Article 258 of the Penal Code forbids any interference by a third party while bailiffs are carrying out their public duties.

During the performance of their duties, bailiffs are protected by law against any insults, violence or aggression from the public.

4.2/ General duties and Professional code of Ethics

The duties invested in bailiffs ensure that they are beyond reproach in their private and professional lives. These duties relate to the bailiffs' dealings with judges, colleagues and third parties.

Dealings with judges

The bailiff must show respect towards judges, offer well-informed legal advice to clients while remaining independent when dealing with debtors or adversaries. Furthermore the bailiff must recognize the client's legitimate interests and enforce their rights against debtors or adversaries. The bailiff must also be able to balance the need for enforcement measures and the overriding interest in maintaining public order.

Dealings with colleagues

Bailiffs must, with regard to their colleagues, refrain from any reprehensible practices and observe, on all occasions, the rules and regulations of fellowship.

The bailiff's interaction with members of the various professional chambers must be respectful, particularly in complying with the discipline of the office and in accepting decisions made by the profession's representative bodies.

Dealings with third parties

Bailiffs are obliged to provide support when requested to do so by judges or members of the public. Any bailiff who refuses to draft a formal document or refuses to carry out a required service, may, on the instigation of the public prosecutor, be sanctioned and/or disciplined without prejudice to any further claim for damages.

This obligation is a logical consequence of the monopoly the bailiff enjoys as a legal and public officer. For

example, if bailiffs do not provide services ordered by the Court, it could bring the Court system to a standstill.

Two exceptions to this implied rule:

- ▶ The refusal by bailiffs to lend their support on certain very specific occasions (e.g. because of illness or for important family reasons, which are left to the discretion of the Courts),
- ▶ In a situation where the bailiff is requested to draft a formal document for friends or family.

In either of the above cases, refusal by the bailiff would be considered legitimate.

4.3 / Limits to the bailiff's office

Bailiffs are required to draft formal documents within the limits of the geographical jurisdiction of their office. These geographical limits result from legislation and may be extended to a wider geographical area by Court order.

Finally, in their capacity as legal officers, bailiffs are subject to various duties

Residence obligation

The number of bailiffs in a geographical jurisdiction and their office address is fixed by decree.

For reasons of convenience, their place of residence should preferably be as close as possible to their office address.

Professional confidentiality

Bailiffs are bound by confidentiality rules, particularly concerning the contents of legal documents which they serve. Any breach of these rules may lead to disciplinary action and criminal sanctions.

4.4 / Restrictive legislation: Courts of First Instance

In cases brought before the common law Courts (Court of First Instance), it is strictly forbidden for the bailiff either to assist as an adviser, or to represent the parties. The bailiff could be sanctioned for doing this.

Bailiffs may however advise and represent clients in the Commercial Court and in some specialized Courts e.g. for disputes over lands or for attachment of earnings orders).

Part 5

Liabilities of bailiffs

The liability of bailiffs covers three main areas, civil liability, criminal liability, and professional and ethical liability in compliance with regulations concerning third-party liability for losses of the victim.

Civil liability refers to the regulations of the Order of bailiffs. Bailiffs are agents for their clients, and as such are answerable to their clients for any liability.

Criminal liability refers to any negligent activities of bailiffs in the performance of their duties relating to the delegation of public power.

5.1 / Civil liability

The concept of “fault” is the main source of civil liability.

The civil liability of the bailiff may be defined as the breach or non-performance of a duty.

In this way, the judge may sanction acts of non-performance and/or positive/deliberate acts.

Bailiffs are subject to the duties set out in the bailiff's code of conduct. These duties are inspired by both social considerations and the duties and obligations arising from contract law.

As representative agents, subject to contract, they are liable for any damage suffered by their clients.

This applies both to bailiffs exercising individually and in professional non-commercial bailiff companies.

5.2 / Criminal liability

Current case law tends to transfer all criminal acts to the bailiff.

As an officially nominated legal officer, the bailiff may be severely sanctioned for a criminal act.

Falsifying of public documents by bailiffs while performing their duties is a criminal offence and can result in prosecution in the Criminal Court (*Cour d'assises*).

The same is true for the fraudulent misuse of public or private funds being held by a bailiff e.g. funds which are held on behalf of a client as part of an action for recovery by mutual agreement or court order.

Any prejudicial consequences of civil or criminal liability committed by bailiff are covered by an indemnity fund (*caisse de garantie*) managed by the profession (CNHU), which assumes collective responsibility for the whole profession.

5.3 / Professional and ethical liability

Professional and ethical liability are dealt with by “disciplinary sanctions”, which are set out by law.

Bailiffs are subjected to disciplinary hearings, organized between the regional and the departmental chambers in which they practice and are composed of their elected peers.

The departmental chamber is responsible for collecting the evidence and the regional chamber imposes the sanctions.

Depending on the seriousness of the offence committed, the following statutory penalties may legally be applied:

- ▶ a call to order
- ▶ simple censure
- ▶ censure before the assembled chamber
- ▶ warning not to repeat the same offence again
- ▶ suspension
- ▶ striking off

Ineligibility to stand for future elections may also be added to the above.

Part 6

Fees

Although bailiffs are a self employed liberal profession, they nevertheless exercise prerogatives of public power.

In this respect, their activities, especially those which result from a monopoly activity, are controlled as public service commissions (see below).

However, public service duties are, generally speaking, subject to tariff setting irrespective of who is the provider of the service (bailiff, *notaires*, etc.). In such cases, rates of fees are fixed by the State and, as a result, tariff agreements vary according to the type of service provided by the bailiff. When the service falls into the public service category (the serving of writs, seizures, sales at public auctions etc.), the legal tariff is fixed by law.

However, the setting of tariffs is unrestricted if the service results from an activity outside of those identified as monopoly activities such as statement of facts, consultations, drafting of private agreements, etc. Unless the activity concerns the recovery of a debt in which case the system of fee calculation employed may result from an agreement between the bailiff and the client and the fee may be based on a percentage of the recovered amount.

However the services provided under the monopoly activity category, and which are therefore subject to a fixed fee, may also be subject to an additional fee within the strict application of the tariff in certain circumstances e.g. an emergency.

However if bailiffs can show that they have conducted procedures 'outside the norm', e.g. to serve a writ they may request a special or supplementary fee on top of the fees specified in the tariff. In the event of a dispute between the bailiff and the client over the amount of the additional fee, a special judge called a *juge taxateur* (taxing judge) is used to arbitrate the claim.

In general, the bailiff's fees resulting from professional activities may be classified into four categories:



- If a court document has been served as part of the enforcement of a judgment, the cost falls to the debtor;
- If it concerns recovery, the bailiff's costs are paid by the creditor, unless the recovery takes place through an enforcement order, in which costs are paid by the debtor;
- If the bailiff's services are part of a non-monopolistic activity (statements of facts, consultation, drafting private agreements), the party requesting the service pays the bailiff;
- If the bailiff is acting as a legal representative in the performing of an assignment ordered by a judge (consulting, observing), the judge will fix the amount to be paid to the bailiff and name the party who must pay the fee in advance.

When a bailiff is nominated to assist in a case in which the parties are receiving legal aid, the fees due are reimbursed by the State directly.

In accordance with the code of ethics, it is prohibited for bailiffs to overcharge for their actions, or to agree to a reduction or waiving of fees if these have been fixed by law.

Departmental Chambers, which are responsible for discipline and State Prosecutors have the responsibility for making sure that bailiffs follow these codes.

Part 7

Professional structure

Since 1945, self-employed 'liberal professionals' who practice in France are represented by professional bodies known as 'Orders' (bailiffs, *notaires*, doctors, architects, accountants, etc.).

Each profession has trade union representation which is more developed in some than in others.

Certain professions have changed the name of their body from 'Order' to "Chamber" and this is why the structure of the professional body representing the bailiffs' profession is called a "Chamber".

Since the time of Napoleon 1st, France has been administratively divided into departments and judicially divided into jurisdictions, each under the control of a court of appeal. Departments are sub-divided into several districts known as *arrondissements* which are further split into *cantons*.

The courts of appeal give rulings on appeals against judgments made by the courts of original jurisdiction located in each department.

Every court of appeal forms a "jurisdiction" which groups together the courts from 3 or 4 different departments.

Until the end of the World War II, each canton was obliged to have a bailiff, while all the bailiffs in the same canton would meet in independent "*arrondissement chambers*" in their own *arrondissements*. These chambers were independent and free of any links with chambers elsewhere. The law of 2nd November 1945 abolished these *arrondissement chambers* and expanded the structures of the profession by creating three tiers of chambers at departmental, regional and national levels.

7.1/ Departmental Chambers

These group together all the bailiffs in the same department.

The main characteristics of each Departmental Chamber are as follows:

- Their power of representation for all bailiffs within the department before the administrative or judicial authorities.

- Their disciplinary procedures which apply to all bailiffs in the department.

Representation is carried out by elected members who select their president by vote.

7.2/ Regional Chambers

Regional Chambers are formed within the jurisdiction of the local Court of Appeal.

The duty of the Regional Chamber is to represent and defend the interests of bailiffs within the jurisdiction of the Court of Appeal. The Court of Appeal hears appeals from courts in the different departments which make up the "jurisdiction" of the Court of Appeal.

Regional Chambers complement the actions of Departmental Chambers and do not exercise any authority over them other than for disciplinary measures (see below).

More particularly, they represent bailiffs before the most senior judges of the Court of Appeal (the First President and the State Prosecutor).

Its role has recently been reinforced by new powers relating to the organization of inspections and the auditing of accounts in the bailiff's office.

Since the law of 22nd December 2010, the regional chamber has the power to pronounce disciplinary measures against bailiffs practicing in the region.

The members who make up the Regional Chamber are elected by the bailiffs in each department of the "jurisdiction" and their representation in the Regional chamber is proportional to the number of bailiffs in the department.

7.3/ The National Chamber

This Chamber is made up of 35 members each representing their local Court of Appeal. Each member is elected for 6 years by all the bailiffs within the jurisdiction of a court of appeal.



The 35 members of the National Chamber elect a board made up of 7 members:

- ▶ a President
- ▶ two Vice-Presidents
- ▶ a Secretary
- ▶ a Treasurer
- ▶ a deputy Treasurer
- ▶ a deputy Secretary

The members of the board of the National chamber are only elected for a period of 2 years. Their posts are renewable indefinitely with the exception of the President whose post is only renewable once.

The National Chamber represents the interests of the profession at national and international level.

In reality, the National Chamber exercises wide powers and is the centralized driving force behind the whole profession.

The National Chamber:

- ▶ organizes the training of trainee bailiffs as well as compulsory ongoing training for bailiffs;
- ▶ deals with matters relating to the social and pension funds of bailiffs and their employees;
- ▶ ensures that French bailiffs are represented overseas as well as in international organizations;
- ▶ encourages the promotion of the profession in the national media and in the most important financial and scientific circles in the country;
- ▶ maintains relations with representatives of other large bodies of 'liberal' professionals;
- ▶ introduces initiatives for the development and evolution of the profession by way of research into new spheres of operation;
- ▶ organizes conferences, seminars, symposiums (both national and international) as well as the bi-annual bailiff's congress;
- ▶ carries out work on internal co-ordination within the profession.

This three tier system of organization (Departmental, Regional and National Chambers) as set out by statute is called a "pyramidal system", although the system is not based on different hierarchical levels. As a result, the National Chamber has no authority over the Departmental and Regional Chambers. The actions of each chamber overlap and complement the others, without there being any form of competition between them.

Part 8

Speciality of the bailiff's office

One of the most important concepts concerning the functions of bailiffs is their status as public and legal officers, and the performance of their duties as 'liberal', or self employed professionals. It is this subtle mix of two completely different concepts which gives the profession an originality which is recognized by all.

It has long been considered that the unique nature of the bailiff's profession obliges bailiffs to operate alone without being able to delegate even a small part of their work. According to the law, bailiffs must act alone when performing the duties demanded of them.

Primarily, and for practical and economic reasons however, this philosophy has gradually given way to the right to work in Partnerships and groups.

Since the beginning of the 20th century, many offices have been closed down or have been forced to merge with larger practices generally located in the bigger cities.

This situation has gradually led to the provision of services by bailiffs through company structures. This was the original reason for the introduction of professional non-commercial companies in 1969 and has as a result enabled groups of bailiffs to operate from the same office.

8.1/Transfer of an office to a successor

By virtue of the "right of presentation", bailiffs may present or introduce their successor to the Ministry of Justice for approval. In exchange for this presentation or introduction, a payment is made to the bailiff by the successor corresponding to the net value of the office.

The Ministry of Justice, which exercises its control over the transfer agreement, pays particular attention to the amount paid for the purchase, since the valuation of a transfer is subject to strict regulations.

The valuation is mainly based on the tax returns submitted by the transferor for each of the five years prior to the



transfer, and which are summarized in a product analysis statement.

Bailiffs are named by decree issued by the Ministry of Justice. Before joining the profession, however, they must take an oath in the local High Court where the office is attached. If this is not done during the month in which the appointment is made, it is considered that the bailiff has given up his or her duties.

8.2/ Professional non-commercial companies

Non-commercial companies are a special feature of the French judicial system whereby a 'liberal' profession is carried out in a group.

The law of 29th November 1966 establishing the professional non-commercial companies has since been applicable to all the independent professions.

By the decree of 31st December 1969 (as amended by the decree of 1992) bailiffs are able to organize themselves in non commercial structures.

Setting up a non commercial company

A non-commercial company may be set up by one or more persons practicing the same liberal profession together. The non-commercial company's object is the joint practice of the profession by its members.

Using a professional non-commercial company in a bailiff's office and the appointment of each of the partners as an associate bailiff is made by decree issued by the Ministry of Justice.

The non-commercial company may commence its activities once each of the partners has taken an oath.

8.3/ The management of a professional non-commercial company

All the partners are considered as managers and are jointly and severally liable for both the non-commercial company and any third parties. Each partner has a single vote.

Transfers of a partner's share may be made by the partner concerned or by transmission to a partner's heirs in the event of his/her death.

Part 9

Entry conditions

The law of 2nd November 1945 and several decrees enacted thereafter set out the general conditions of entry into the profession.

9.1/ General conditions

Candidates wishing to become bailiffs must be of French nationality as defined by the Code of Nationality. They must not have a criminal record or have had any disciplinary measures taken against them. They must never have committed any acts contrary to honour, integrity or morals and have never been made bankrupt.

9.2/ Educational entry requirements

Candidates who satisfy the general conditions must also have a university degree in law, undergo a period of practical training and pass the professional examination, unless they have a total or partial exemption from any of the above.

Standard method of entry

The future bailiff must have a law degree or an equivalent qualification before starting the period of practical training. The period of practical training lasts two years, half of which must be in a bailiff's office. The other half is spent in the office of a *notaire*, auctioneer, lawyer (*avocat*), accountant, public administrator, the legal or tax department of a company or with a member of a regulated legal or judicial profession abroad.

This period of practical training may be reduced to one year for those candidates who have passed the professional examination of either Clerk of the Commercial Court (*greffier*), auctioneer, *notaire* or for any candidate holding a postgraduate legal qualification leading to qualification as a lawyer.

The period of practical experience consists of professional practice and training courses provided by the Na-

tional Chamber of Bailiffs and the National School of Procedure.

The period of practical training is completed by a professional examination before a national board of examiners. This board is chaired by a judge (*conseiller*) of the Supreme Court, a senior university lecturer, three bailiffs and a bailiff's clerk.

Exemptions from the standard method of entry

In certain cases the law allows for an exemption for all or part of the period of practical training for the professional examination and even for the degree qualification.

Exemption from the degree qualification: conditions

Those persons with a degree from Political Studies Institutes or those who, as graduates from the National School of Procedure, have worked as a clerk for a period of ten years are exempt from the law degree requirement.

Full exemption from the professional examination and from the period of practical training.

For all former bailiffs.

Exemption on a case by case basis.

This decision is made by the Ministry of Justice, on the advice of the Board of the National Chamber of Bailiffs.

Auctioneers are exempt from the period of practical training and may be exempt from the professional examination.

► The following may also be exempt from the period of practical training by the decision of the Ministry of Justice: chief clerks or those employees who have worked in a practice for six years and have a law degree.

► The following may also be exempt from the professional examination and from all or part of the period of



practical training: former judges, former presidents and judges (*conseillers*) of the administrative courts, former lecturers and senior lecturers in law and economics, former *notaires*, former senior lecturers and part-time lecturers who are Doctors of Law and who have practiced for at least two years, former *avocats* of the Supreme Court and the Council of State who have also practiced for at least two years, persons who have worked for five years in the legal or tax departments of a public or private company employing at least three in-house lawyers; former Clerks of the Court (*greffiers*) may be exempt from both the period of professional training and the professional examination on the decision of the Ministry of Justice.

Special method of entry

French nationals who have studied in a Member state of the E.U.

The decree of 21st December 1990 allows French nationals who either hold qualifications or degrees from other E.U. states or have exercised certain activities in a Member State of the European Union to be exempt, under certain conditions, from the degree requirements as well as from the period of professional training and the professional examination. This mainly applies to the following candidates:

Those with a university degree (a law degree or equivalent) and a diploma confirming that they have undergone a period of professional training in the Member State or another country. A certificate from the appropriate authorities in the Member State or other country must be produced which recognizes the qualification and certifies that professional training has taken place in that State.

The prospective candidate must still sit an examination before the bailiffs' examining board.

Part 10

Training

Trainee bailiffs follow a training scheme at the *Ecole Nationale de Procédure (ENP)*, which was introduced in 1960 and has since been regularly upgraded to adapt to new conditions.

France has 3.100 independent 'liberal' bailiffs who employ 11.000 staff. In addition, there are on average 400 students per year studying at the *ENP* to become bailiffs.

In 2005, the *ENP* introduced a new system of training divided into three levels:

1. *Clerc expert*
2. *Clerc aux procédures*
3. *Clerc significateur*

The first two levels (*clerc expert*, *clerc aux procédures*) lead to the qualification of bailiff. The third level leads to the qualification of "*clerc significateur*" (document serving clerk).

Clerc expert

Entry requirements: Either Master of laws degree from a University or the professional qualification of *clerc aux procédures* after two years service in a bailiff's office.

Training period: 600 hours over two years of which 480 are in a classroom situation. Training hours are considered as working hours.

The training programme comprises of:

- 28 modules based on themes focused on the bailiff's professional activities, especially enforcement proceedings, protective measures, service of documents, file accounting, drafting claims or leases.
- 16 pieces of homework to prepare by correspondence in compliance with the professional examination programme covering the following subjects: drafting documents, choice and methods of procedure, drafting legal advice and drafting legal reasoning.

Clerc aux procédures

Entry requirements: Baccalaureat or 3 years' experience in a bailiff's office.

Training period: 238 hours within a 9 month period spent on individual tuition.

The training programme comprises of: 18 modules based on themes focused on the bailiff's clerk's activities, especially concerning managing enforcement proceedings, service of documents, accounting of files, etc.

Clerc significateurs

Entry requirements: none

Training period: 56 hours within a maximum of 4 months.

The training programme comprises of: 6 modules based on the service of documents.

10.1/ Training of employees

There are two types of training for employees in bailiffs' offices:

Training of support staff

Support staff who have joined the practice without any advanced level qualifications, are required to attain a specific level of knowledge within their professional activity in order to be able to achieve internal promotion within the firm.

In this way, a secretary may become a clerk, and in so doing will be able to work directly with the bailiff.

The main categories of staff are as follows: basic staff: secretaries, receptionists, accounting staff and clerks: clerks who serve documents, clerks with responsibility for proceedings, chief clerks.

Preparation for the role of bailiff

There are two possible ways of becoming a bailiff, by internal access or external access.

The National Chamber training department prepares prospective candidates in one of the two access methods above.

Internal entry

Any employee can become a bailiff after working for ten years in a bailiff's office, as long as certain conditions are met and provided that they possess the professional competence for the job and have worked for five years as a chief clerk.

However, during this ten-year period, the employee must have obtained the qualification of "*clerc expert*" awarded by the *ENP*.

The "*clerc expert*" may, at a later date, pass the professional examination for bailiffs.

How is the training organized?

Training is carried out by the *ENP*.

The *ENP* is an association which is a private professional school financed by the National Chamber of Bailiffs and the "*OPCAPL*" (a body which collects contributions from every practising bailiff). It is however administered by a joint organization made up of bailiffs and union representatives of staff from bailiffs' offices.

Training is given in the form of correspondence courses, homework and practical conferences organized region by region to ensure that staff do not have to travel long distances.

The teaching (examiners and lecturers) is provided by bailiffs, judges and university lecturers.

The "*clerc expert*" course lasts two years.

The length of the course varies depending on the initial level of education of the employees and their particular requirements.

For example, employees who enter a firm with a *baccalauréat* and who wish to become proceedings' clerks complete two years of training.

If however they wish to qualify as bailiffs they will be required to undergo six years of training.

Throughout the period of training, employees take examinations which allow them to obtain, qualifications which entitle them to an increase in salary.

At the end of the training course a certificate is awarded by the *ENP* called the *diplôme de clerc aux procédures*. This is the only qualification which can replace a law degree for those who wish to become bailiffs and who have not been able to study law at University.



External entry

Since 1st January 1995, an applicant for the post of bailiff must hold a Masters degree in law and must have completed a training period of two years in a bailiff's office.

The training period has two aims:

- ▶ to prepare candidates for the State professional examination for bailiffs.
- ▶ to prepare candidates for their duties as bailiffs.

This dual preparation is carried out by a special department at the National Chamber training centre called the "Trainee Department" (*D.F.S.*).

10.2 / Training of trainees

Trainee bailiffs have to follow two types of courses for two years before taking the bailiff's final professional examination.

E.N.P. courses

Trainees have to attend courses for one full day a week in a regional *ENP* centre.

There are approximately 20 such centres established throughout metropolitan France and overseas territories.

The courses provided are practical in content using case studies with work manuals to be completed by the trainees. Trainees work together in small groups.

The subjects studied are wide and varied and include:

- ▶ Service of documents
- ▶ Managing the seizure of bank accounts
- ▶ Drafting statements of facts
- ▶ For the exhaustive list please consult: www.enpepp.org

DFS, Trainee Department of the National Chamber

Trainees have to attend courses for one full day a month in one of the six regional centres.

The courses provided are formal in content with large groups in a lecture theatre.

The courses are provided by experienced bailiffs.

This specific and complementary teaching takes place via lectures on topics related to management, computing, office automation, taxation etc.

For example:

- ▶ Introduction to accounting
- ▶ Professional liability of bailiffs
- ▶ Managing a bailiff's office

Training in an office

Trainees spend two years in a bailiff's office in order to prepare them for the everyday routine activities of professional life.

The bailiff is the training supervisor and has to demonstrate to the trainees how the office is managed.

In this way, trainees will be able to manage cases themselves and follow proceedings from beginning to end eg. freezing bank accounts, attachment of earnings, evictions, seizure of movable goods etc.

Trainees must also know how to serve documents or to draft a statement of facts.

After a two-year training period, trainees may sit the professional examination which they must pass in order to become bailiffs.

The professional examination

According to decree N° 75-770 of 14th August 1975, this examination is open to:

All internal entrants without a law degree

After ten years working in a bailiff's office in which at least five years have been served as a principal clerk and on condition that the diploma of the *ENP* has been obtained.

All external entrants holding a four year master's degree in law.

The academic stage must be followed by a two-year training period in a bailiff's office.

Two examination sessions take place every year in Paris under the authority of the national board of examiners, nominated by the Ministry of Justice, and presided over by a judge of the Supreme Court. The board of examiners consists of judges, university lecturers, bailiffs and clerks or chief clerks. The examination includes written and oral tests and has a reputation for its stringency with a failure rate of about 70 to 75%.

The final professional examination is financed by the National Chamber of bailiffs.

10.3 / On-going training for bailiffs

The law of 22nd December 2010 introduced compulsory on-going training for bailiffs with a provision providing for a minimum of twenty hours a year or forty hours every two years.

In order to comply with this provision, the *ENP* has created a special department, called *ENP PRO*, organizing training sessions exclusively for bailiffs throughout France providing on-going training at the request of regional or departmental chambers of bailiffs.

A comprehensive list of subjects, dates and venues can be found at www.enppro.org

These include: eviction, taking over abandoned premises, seizure of counterfeit goods, etc.

On-going training may also be given through other national and international conferences, seminars, or conventions.

This duty to comply with the compulsory on-going training requirement is supervised by inspectors sent out by the regional chamber annually to control bailiff's offices to ensure that they fulfill the requirements of professional practice.

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