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LEGAL TOPIC: THE BAILIFF

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WHO OR WHAT IS A BAILIFF?

Simply put, Bailiffs are individuals with specific legal powers to reclaim debts, such as rent in arrears on behalf of a landlord or outstanding debts on Petty Civil Court orders on behalf of a judgment creditor. The Bailiff

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therefore acts as the agent of any such person. In that light, a Bailiff can be described as an enforcement officer or a debt collector.

In accordance with **the Bailiffs Act of Trinidad and Tobago Chapter 4:61 (“The Bailiffs Act”)**, a Bailiff is defined as a person who is employed to carry out the functions of a Bailiff under the Petty Civil Courts Act or the Landlord and Tenant Ordinance.

Should any such debtor fail to settle outstanding payments such as rent in arrears or a Petty Civil Court judgment debt, Bailiffs are vested with the power to repossess that debtor’s belongings and sell any such belongings at auction. The proceeds are then used in satisfaction of the debt.

In order for a Bailiff to carry out these acts, the said Bailiff must be licensed under the Bailiffs Act.

Section 8 of the Bailiffs Act provides:

(1) No person shall engage in business as a Bailiff unless he is licensed under this Act and is in possession of his licence.

(2) A person who carries out any function of a Bailiff—

(a) without a licence;

(b) while his licence is suspended; or

(c) after his licence is cancelled, commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment

for six months, and in the case of a second or subsequent offence to a fine of twenty-five thousand dollars and to imprisonment for two years.

Section 10 of the Bailiffs Act also provides:

10. (1) *No Bailiff shall enter any premises for the purposes of carrying out any of his functions unless he shows his licence and gives a signed copy of the form as set out in the Schedule to the occupier of, or other adult person on, the premises together with a signed or certified copy of the document upon which he has the authority to perform his function on that occasion.*

(2) *Without prejudice to the suspension or cancellation of his licence under this Act, a Bailiff who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year*

In Trinidad and Tobago, the duties and functions of Bailiffs are specified in accordance with statute and Bailiffs are also given certain powers and authorities to execute such actions on debtors. Today we will look at the powers, functions and duties of a Bailiff.

POWERS, FUNCTIONS AND DUTIES OF A BAILIFF

Section 9 of the Bailiffs Act speaks directly to the functions and duties of a Bailiff as follows:

9. (1) *The functions of a Bailiff under this Act are to—*

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(a) levy execution in accordance with a judgment of a Judge of the Petty Civil Court;

(b) serve documents from a Court of summary jurisdiction; (c) levy tenant's goods for arrears of rent as provided for under the Landlord and Tenant Ordinance; and

(d) repossess goods on hire purchase in accordance with the Hire Purchase Act.

(2) The functions listed in subsection (1)(a) and (b) shall be performed exclusively by a public service Bailiff and the other functions listed in subsection (1)(c) and (d) shall be performed exclusively by any other Bailiff.

(3) A Bailiff shall not serve any process or levy any execution on a public holiday, except in case of urgency with leave of the Court.

(4) No person shall engage in business as a Bailiff while an employee of or engaging in the business of a debt collection agency.

In order for a Bailiff to carry out any of these functions, he must be properly authorized as an agent of the creditor:

Perring v Emerson [1906] 1 K. B. 1: *no person shall act as a Bailiff to levy distress for rent unless he shall be authorized to act as a Bailiff by a certificate by a county court judge or a landlord.*

In executing the functions and/ or duties of a Bailiff, it is also important to note that a Bailiff must act in accordance with the Code of Conduct for Bailiffs which can be found under the

Fifth Schedule within the Bailiffs Act. This Code of Conduct provides the rules under which a Bailiff must operate so that there is no abuse of power.

For your ease of reference and a better understanding of how a Bailiff must operate, we have decided to include the Bailiff's Code of Conduct, as per the Bailiff's Act, as a part of today's lesson;

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FIFTH SCHEDULE

(Regulation 12).

CODE OF CONDUCT FOR BAILIFFS

1. A bailiff shall exemplify high standards of integrity and honesty in the performance of his duties and responsibilities.
2. A bailiff shall refrain from any conduct which is detrimental to the office of a bailiff or which may tend to discredit the office or bring it into disrepute.
3. A bailiff shall, within the law, defend with due diligence and to the best of his ability the rights and interests of those who require his services.
4. A bailiff shall not render any service involving—
 - (a) disloyalty to the State;
 - (b) disrespect for any judicial office;
 - (c) corruption of any person exercising public or private trust; and
 - (d) deception or betrayal of the public.
5. When a fellow bailiff has been asked or requested to look into a matter, another bailiff shall not knowingly become involved in that matter.
6. A bailiff shall not intentionally or wilfully disseminate false or misleading information in respect of a fellow bailiff.
7. A bailiff shall at all times be courteous, co-operative and respectful to—
 - (a) legal and judicial officers;
 - (b) police officers, and to other members of the Protective Services;
 - (c) any member of the Public Service; and
 - (d) members of the public.
8. A bailiff shall respect the views and opinions of fellow bailiffs and co-operate with his colleagues whenever his professional services are sought.
9. A bailiff shall not wilfully use any document so as to deceive any person or to pervert the course of justice.
10. A bailiff by his deportment, his demeanour, dress, conduct, and general behaviour, in both his public and private life, shall seek to command

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the respect and admiration of his colleagues and the public and shall also exemplify by such deportment the honour and dignity of the profession.

11. A bailiff shall exercise honesty, objectivity and diligence in the performance of his duties and responsibilities.
12. A bailiff shall refrain from entering into any activity which may be in conflict with the interest of his trade or which would prejudice his ability to carry out objectively his duties and responsibilities.
13. A bailiff shall undertake only those services which he can reasonably expect to complete with professional competence and within his function and authority.
14. A bailiff shall be prudent in the use of information acquired in the course of his duties, and he shall not use confidential information for any personal gain nor in any manner which would be contrary to law.
15. A bailiff shall when reporting on results of his work, reveal all material facts known to him which, if not revealed, could either distort reports of the operation under review or conceal unlawful practices.
16. A bailiff shall continually strive for improvement in proficiency, effectiveness and quality of his service.
17. A bailiff shall not use abusive or obscene language while in the performance of his duties.
18. A bailiff shall not engage in any violence, except in self-defence, while in the performance of his duties.
19. A bailiff shall not levy for arrears of rent or repossess goods on any premises between the hours of 6.00 p.m. to 6.00 a.m.
20. A bailiff shall not levy or repossess goods on hire purchase on any private premises in the absence of any adult eighteen years or over, unless otherwise provided by law.
21. A bailiff shall not sell levied goods before the expiration of five working days after levy, and the sale shall be only by public auction, unless otherwise provided for by law or order of the Court.
22. A bailiff shall not sell levied goods to members of his family or to himself.

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23. A bailiff shall not perform the functions of a bailiff without the presence of a police officer or a member of the Special Reserve Police Service if he believes that a breach of the peace will occur.
24. A bailiff shall not break and enter any premises to repossess goods under the Hire Purchase Act unless he is in possession of a judgment issued by a Court of summary jurisdiction to so do.
25. Every bailiff shall comply with this Code of Conduct.

In enforcing this Code of Conduct, **Section 48 of the Petty Civil Courts Act** **Section 4:21** provides that:

48. *If the Bailiff or any clerk or other officer of the Court, acting under or under colour or pretence of the process of the Court, is charged with extortion or misconduct, or with any neglect of duty, or with not duly paying or accounting for any money levied by him under the authority of this Act the Judge may enquire into the matter in a summary way, and for that purpose summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced; and the Judge may thereupon make such order for the repayment of any money extorted, or for the due payment of any money so levied as mentioned above, and for the payment of such damages and costs as he thinks just; and the Judge may also, if he thinks fit, impose such fines upon such Bailiff, clerk or other*

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officer, not exceeding two hundred dollars for each offence, as he thinks adequate.

Let's now have a closer look at those instances in which a Bailiff is required to exercise these functions!

THE BAILIFF ACTING AS AN AGENT FOR A LANDLORD

A landlord or landlady may distrain a tenant's goods in lieu of rent in arrears through a Bailiff so that these goods can be sold in order to pay off any debts owed.

The Landlord and Tenant Ordinance, Chapter 27 No. 16 (1846) of the Laws of Trinidad and Tobago states at **Section 8**:

Every person having any rent in arrear and due to him upon any grant, lease, demise, or contract whatsoever, shall have the same remedy by distress for the recovery of such rent as is given by the law of England in the like case.

According to **Halsbury's Laws of England 4th ed. Vol 13 para 207 page 110** –

“In order that the right to distrain for rent upon a demise may arise the relation of landlord and tenant must exist, both when the rent becomes due and when the distress is levied, and the rent must be in arrear”. An actual existing demise is necessary; the common law right to distrain for rent does not...continue after it has determined.

A landlord may appoint and authorize a Bailiff verbally but it is usually advisable for his authority to be insured by virtue of a **Warrant of Distress**. A warrant of distress is a writ that authorizes a Bailiff to seize goods on a creditor's behalf from a debtor.

Such a warrant creates an implied warranty that the landlord does in fact have the right to distrain and also provides an implied undertaking to indemnify the Bailiff against any act properly done in the exercise of the authority given. Any such warrant will not protect a Bailiff against illegal or irregular acts done by him in the course of distraining.

The old case of **Draper v Thompson** held that an indemnity given by a landlord on whose behalf a Bailiff has to distrain against covers everything that is bona fide, in the progress of the distress. If the Bailiff had done any willful mischief or is guilty of any willful default, such an indemnity would not cover that.

A Bailiff must also be mindful that in accordance with the case of **Williams v Stiven (1846) 9 QB 14**, the general rule is that a distress can only be made of goods found upon some part of the premises out of which the rent issues.

ENFORCEMENT OF A PETTY CIVIL JUDGEMENT

In the enforcement of a Petty Civil Judgement, a warrant of distress will also be required in order for a Bailiff to act. **Section 82 (1-2) of the Summary Courts Act Chapter 4:20** provides as follows:

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82. (1) Any sum of money adjudged to be paid by an order shall, if the written law on which the order is founded so directs, but subject to the following provisions of this section, and may, in the discretion of the Court in other cases, be levied upon the movable property of the defendant by distress and sale of such property.

(2) In any such case the Court shall, but subject as aforesaid, or may, as the case may be, **issue its warrant of distress** for the purpose of levying the same, and such warrant shall be in writing and shall be signed by the Magistrate or Justice.

It is noteworthy that a debtor can lawfully resist a Bailiff **without a valid warrant** from entering the home if entry is being made against his will: **Vaughan v McKenzie [1969] 1 QB 557**.

- **How is the Bailiff's Power of Entry Effected?**

The entry into premises for the purpose of levying distress must be lawful. The basic rule is that any entry must be peaceful and effected by the usual means adopted by persons having access to the premises, no force whatsoever being used. A Bailiff, therefore must not break open or enter locked doors or gates or other enclosures such as fences. A Bailiff may, however, enter through an open door or open window or he may open an outer door by turning a key or lifting a latch which has to be on the outside. The test as established in **Thompson v Facey [1976] 14 JLR 158** is if there is protection to the outside world (such as a closed window or locked door), entry must not be forced.

As per **Nash v Lucas [1867] 2 QB 590**, a Bailiff entering a dwelling space through a closed but unfastened/unlocked window is unlawful.

If a debtor deliberately avoids the Bailiff having a valid levy, the Bailiff may only force re-entry by appointment with an order signed by a judge: **Khazanchi & Anor v Faircharm Investments Ltd & Ors [1998]**

A door left open is an implied license for a Bailiff to enter: **Faulkner v Willetts [1982] Crim LR 453.**

Provided a Bailiff enters a property peacefully and without breaking in, he can break open internal doors inside the property: **Lee v Gansel [1774] 1 Cowp 1**

If a Bailiff enters a property and makes a noise and disturbs the peace it is lawful for the occupier to eject him and if he refuses to leave the police may be called: **Green v Bartram [1830] 4C&P**

- **How is the Bailiff's Power of Seizure effected?**

According to **Halsbury's Laws of England, 4th edition, Volume 13, paragraphs 307 and 309:**

"a seizure may be either actual or constructive. It is actual by laying hands on the article, or on one of several articles and claiming to detain it or them until the rent is satisfied".

As pursuant to **Cramer v Mott (1870) LR 5 QB 357**

“The most proper manner of making a distress is... to take hold of some personal chattel and declaring that it is taken as distress in the name of all the goods ...and this is will be good seizure of all”.

In accordance with **Swann v Earl of Falmouth (1828) 8 B & C 456.**

“Seizure is constructive if the Bailiff after intimating his intention to distrain walks round the premises and... gives written notice that he has distrained”.

There are certain items that will be exempt from being seized by a Bailiff. Items such as perishable foods, loose food items, bedding and clothing are all exempt from levy : **Davies v Property Reversionary Investments Co Ltd [1929] 2 KB 222.**

Section 82 (3-5) of the Summary Courts Act Chapter 4:20 provides

(3) Where a warrant of distress is issued by the Court, it shall authorise the person charged with the execution thereof to take any money as well as any goods of the person against whom the distress is levied, and any money so taken shall be treated as if it were the proceeds of sale of goods taken under the warrant.

(4) If it appears to the Court, at the time such sum of money is adjudged to be paid or when application is made to it to issue any such warrant, that the defendant has no money or movable property whereon to levy the distress, or that, in the event of a warrant of distress being issued, his money or movable property will be insufficient to satisfy the sum of money adjudged to be paid by the order, or that the levy of the distress will be more injurious to him or his family than imprisonment, the Court may, if it thinks fit, instead of issuing such warrant of distress, order the defendant, on non-payment of the said sum, to be imprisoned for any term not

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exceeding the term prescribed in respect of a like sum in the scale of imprisonment set out in section 68.

(5) The wearing apparel and bedding of a person and his family, and, to the value of two hundred dollars, the tools and implements of his trade, shall not be taken under a warrant of distress issued by the Court.

On the other hand, a levy that includes exempt goods does not invalidate the whole levy: **Canadian Pacific Wine Company v Tuley [1921] 2 AC417**

However, it has been held that an excessive levy will give rise to a cause of action only where the value of the goods seized was out of all proportion to the amount of rent actually due: **Thompson v Facey [1976] 14 JLR 158 & Hernandez v Rewan [2007] High Court, Trinidad and Tobago, No. CV 00084 of 2005 (unreported).**

ASSAULT OR OBSTRUCTION OF A BAILIFF DURING ENTRY OR SEIZURE

We can also ask ourselves, what happens if a debtor attempts to stop a Bailiff from carrying out his powers?

Section 47 of The Petty Civil Courts Act affords protection to a Bailiff against any assault or obstruction during the execution of an entry and seizure.

47. *If a Bailiff is assaulted while in the execution of his duty, or if any rescue is made or attempted to be made of any goods levied under process of the Court, the person so offending is liable on summary conviction to a fine of one thousand dollars, or to imprisonment for six months, and the Bailiff or any police officer may in any such case take the offender into custody (with or without warrant) and bring him before a Magistrate to be dealt with accordingly.*

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