

Word Study Bastard

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Introduction

See the introduction for “Word-Study-Divorce”

For more details, see these documents

- “Word-Study-Bastard-Mamzir-H4464”, Article # [337](#)

BASTARD

1. A word derived from bas or bast, signifying abject, low, base; and aerd, nature. ^{Minshew, Co. Lit. 244;} *a. Enfant de bas*, a child of low birth. Dupin. According to Blackstone, ^{1 Com. 454,} a bastard in the law sense of the word, is a person not only begotten, but born out of lawful matrimony. This definition does not appear to be complete, inasmuch as it does not embrace the case of a person who is the issue of an illicit connection, during the coverture of his mother. The common law, says the Mirror, only taketh him to be a son whom the marriage proveth to be so. ^{Horne's Mirror, c. 2, 7; see Glanv. lib 8, cap. 13 Bract. 63, a. b.; 2 Salk. 427.; 8 East, 204.} A bastard may be perhaps defined to be one who is born of an illicit union, and before the lawful marriage of his parents.

2. A man is a bastard if born, first) before the marriage of his parents; but although he may have been begotten while his parents were single, yet if they afterwards marry, and he is born during the coverture, he is legitimate. ^{1 Bl. Com. 455, 6.} Secondly, if born during the coverture, under circumstances which render it impossible that the husband of his mother can be his father. ^{6 Binn. 283; 1 Browne's R. Appx. xlvi.; 4 T. R. 356; Str. 940 Id. 51 8 East, 193; Hardin's R. 479.} It seems by the Gardner peerage case, reported by Dennis Le Marebant, esquire, that strong moral improbability that the husband is not the father, is sufficient to bastardize the issue. ^{Bac. Ab. tit. Bastardy, A, last ed.} Thirdly, if born beyond a competent time after the coverture has determined. Stark. Ev. part 4, p. 221, n. a Co. Litt. 123, b, by Hargrave & Butler in the note. See Gestation. 3. The principal right which bastard children have, is that of

maintenance from their parents. 1 Bl. Com. 458; Code Civ. of Lo. 254 to 262. To protect the public from their support, the law compels the putative father to maintain his bastard children. See Bastardy; Putative¹ father.

4. Considered as nullius filius, a bastard has no inheritable blood in him, and therefore no estate can descend to him; but he may take by testament, if properly described, after he has obtained a name by reputation. ¹ 1 Rop. Lew. 76, 266; Com. Dig. Descent, C, 12; Ie. Bastard, E; Co. Lit. 123, a; Id. 3, a; 1 T. R. 96 Doug. 548 3 Dana, R. 233; 4 Pick. R. 93; 4 Desaus. 434. But this hard rule has been somewhat mitigated in some of the states, where, by statute, various inheritable qualities have been conferred upon bastards. ^{See} 5 Conn. 228; 1 Dev. Eq. R. 345; 2 Root, 280; 5 Wheat. 207; 3 H. & M. 229, n; 5 Call. 143; 3 Dana, 233.

5. Bastards can acquire the rights of legitimate children only by an act of the legislature. ¹ Bl. Com. 460; 4 Inst. 36.

6. By the laws of Louisiana, a bastard is one who is born of an illicit union. ^{Civ. Code of Lo. art. 27, 199.} There are two sorts of illegitimate children; first, those who are born of two persons, who, at the moment such children were conceived, might have legally contracted marriage with each other; and, secondly, those who are born from persons, to whose marriage there existed at the time, some legal impediment. ^{Id. art. 200.} An adulterous bastard is one produced by an unlawful connexion² between two persons, who, at the time he was conceived, were, either of them, or both, connected by marriage with some other person or persons. ^{Id. art. 201.} Incestuous bastards are those who are produced by the illegal connexion of two persons who are relations within the degrees prohibited by law. ^{Id. art. 202.}

7. Bastards, generally speaking, belong to no family, and have no relations; accordingly they are not subject to paternal authority, even when they have been acknowledged. ^{See 11 East, 7, n.} Nevertheless, fathers and mothers owe alimony to their children when they are in need. ^{Id. art. 254, 256.} Alimony is due to bastards, though they be adulterous or incestuous, by the mother and her ascendants. ^{Id. art. 262.}

8. Children born out of marriage, except those who are born from an incestuous or adulterous connexion, may be legitimated by the subsequent marriage of their father and mother, whenever the latter have legally acknowledged them for their children, either before the marriage or by the contract of marriage itself. Every other mode of legitimating children is abolished. ^{Id. art. 217.} Legitimation may even be extended to deceased children who have left issue, and in that case, it enures³ to the benefit of that issue. ^{Id. art. 218.} Children legitimated by a subsequent marriage, have the same rights as if born during the marriage. ^{Id. art. 219.} See, generally, Vin. Abr. Bastards Bac. Abr. Bastard; Com. Dig. Bastard; Metc. & Perk. Dig. h. t.; the various other American Digests, h. t.; Harr. Dig. h. t.; 1 Bl. Com. 454 to 460; Co. Litt. 3, b.; Bouv. Inst. Index, h. t., And Access; Bastardy; Gestation; Natural Children.

DENIZEN

English law.

¹ PUTATIVE: Reputed to be that which is not. The word is frequently used, as putative father, (q. v.) putative marriage, putative wife, and the like. And ^{Toullier, tome 7, n. 29,} uses the words putative owner, proprietare putatif. Lord Kames uses the same expression. Princ. of Eq. 391.

PUTATIVE FATHER The reputed father. 2. This term is most usually applied to the father of a bastard child. 3. The putative father is bound to support his children, and is entitled to the guardianship and care of them in preference to all persons but the mother. ¹ Ashm. It. 55; and vide 7 East, 11; 5 Esp. R. 131; 1 B. & A. 491; Bott, P. L. 499; 1 C. & P. 268; 1 B. & B. 1; 3 Moore, R. 211; Harr. Dig. Bastards, VII.; 3 C. & P. 36.

² is a variant spelling of connection

³ **ENURE (TO...)** To take, or have effect or serve to the use, benefit, or advantage of a person. The word is often written **inure**. A release to the tenant for life, enures to him in reversion; that is, it has the same effect for him as for the tenant for life. A discharge of the principal enures to the benefit of the surety.

1. An alien born, who has obtained, *ex donatione legis*, letters patent to make him as English subject.
2. He is intermediate between a natural born subject and an alien. He may. take lands by purchase or devise, which an alien cannot, but he is incapable of taking by inheritance. ^{1 Bl. Com. 374.} In the United States there is no such civil condition.

BASTARD EIGNE'

Eng. law. Elder bastard. By the old English law, when, a man had a bastard son, and he afterwards married the mother, and by her had a legitimate son, the first was called a bastard eigne, or, as it is now spelled, aine, and the second son was called puisne, or since born, or sometimes he was called mulier puisne. ^{See Mulier; Eigne,}
^{2 Bl. Com. 248.}

puisne: (in the UK and some other countries) denoting a judge of a superior court inferior in rank to chief justices

mulier: (law, historical) Lawful issue born in wedlock, in distinction from an elder brother born of the same parents before their marriage.

Eigne: a. 1. (Law) Eldest; firstborn. 2. Entailed; belonging to the eldest son. Bastard eigne: a bastard eldest son whose parents afterwards intermarry.

BASTARDY (1)

crim. law. The offence of begetting a bastard child.

BASTARDY (2)

persons. The state or condition of a bastard. The law presumes every child legitimate, when born of a woman in a state of wedlock, and casts the *onus probandi* ^{the burden of proof} (q. v.) on the party who affirms the bastardy. ^{Stark.}
 Ev. h. t.

COVERTURE

1. The state or condition of a married woman.

2. During coverture, the being of the wife is civilly merged, for many purposes, into that of her husband; she can, therefore, in general, make no contracts without his consent, express or implied. ^{Com. Dig. Baron and Feme, W; Pleader, 2 A 1; 1 Ch. Pl. 19, 45; Litt. s. 28; Chit. Contr. 39; 1 Bouv. Inst. n. 276.}

3. To this rule there are some exceptions: she may contract, when it is for her benefit, as to save her from starvation. ^{Chit. Contr. 40.}

4. In some cases, when coercion has been used by the husband to induce her to commit crime, she is exempted from punishment. ^{1 Ha1e, P. C. 516; 1 Russ. Cr. 16.}

See D:\Documents\Law\Law_C_Drive\Family\Marriage License\coverture01 - Can a Husband Represent His Wife.pdf

APPEARANCE

practice.

1. Signifies the filing common or special bail to the action.

2. The appearance, with all other subsequent pleadings supposed to take place in court, should (in accordance with the ancient practice) purport to be in term time⁴. It is to be observed, however, that though the proceedings are expressed as if occurring in term time, yet, in fact, much of the business is now done, in periods of vacation.

...

10. In criminal cases, the personal presence of the accused is often necessary. It has been held, that if the record of a conviction of a misdemeaner be removed by certiorari, the personal presence of the defendant is necessary, in order to move in arrest. of judgment: but, after a special verdict, it is not necessary that the defendant should be personally present at the argument of it. ^{2 Burr. 931 1 Bl. Rep. 209, S. C.} So, the defendant must appear personally in court, when an order of **bastardy** is quashed and the reason is, he must enter into a recognizance to abide the order of sessions below. ^{1 Bl. Rep. 198}. So, in a case, when two justices of the peace, having confessed an information for misbehaviour in the execution of their office, and a motion was made to dispense with their personal appearance, on their clerks undertaking in court to answer for their flues, the court declared the rule to be, that although such a motion was subject to the discretion of the court either to grant or refuse it, in cases where it is clear that the punishment would not be corporal, yet it ought to be denied in every case where it is either probable or possible that the punishment would be corporal; and therefore the motion was overruled in that case. And Wilmot and Ashton, Justices, thought, that even where the punishment would most probably be pecuniary only, yet in offences of a very gross and public nature, the persons convicted should appear in person, for the sake of example and prevention of the like offences being committed by other persons; as the notoriety of being called up to answer criminally for such offences, would very much conduce to deter others from venturing to commit the like. ^{3 Burr. 1786, 7}.

⁴ What does “in term time” mean? See D:\SkyDrive\Articles\JKM\Word-Study-In-term-time.doc