

# Word Study Divorce from Bouvier's Law Dictionary

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## Introduction

My dependency on my understanding of the scriptures is heavily dependent on teaching of “Two House one Covenant”. This teaching states that the House of Israel, got a Bill of Divorce and, I would add, that the primary purpose of the Messiah was to resolve that issue. Another key hermeneutical teaching to help in understanding scripture is to understand that what happens in the physical realm is so we can understand the spiritual realm. The most important spiritual thing that needs to be understood is the marriage covenant between YHVH and Israel, therefore in the physical equivalent to that is a marriage covenant between a man and woman.

Tragically things don't always work out as planned, hence the study of Divorce is most important.

## DIVORCE<sup>1</sup> - Complete dissolution vs. Separation

1. The dissolution of a marriage contracted between a man and a woman, by the judgment of a court of competent jurisdiction, or by an act of the legislature<sup>2</sup>. It is so called from the diversity of the minds of those who are married; because such as are divorced go each a different way from the other. Ridley's Civ. & Eccl. Law, pp. 11, 112. Until a decree of divorce be actually made, neither party can treat the other as sole, even in cases where the marriage is utterly null and void for some preexisting cause. Griffiths v Smith, D. C. of Philadelphia, 3 Penn. Law Journal, 151, 153. A decree of divorce must also be made during the lifetime of both the parties.<sup>3</sup> After the decease of either the marriage will be deemed as legal in all respects. Reeves' Dom. Rel. 204; 1 Bl. Com. 440. See Act of Pennsylvania, March 13, 1815, 5.

2. Divorces are of two kinds; 1. *a vinculo* without bond *matrimonii*, (q. v.) which dissolves and totally severs the marriage tie; and, 2. *a mensa et thoro*, divorce from bed-and-board (q. v.) which merely separates the parties. 3. - 1. The

<sup>1</sup> Source: Bouvier's 1856 Law Dictionary

<sup>2</sup> Is a biblical example of this found in 1<sup>st</sup> Samuel Chapter 8?

<sup>3</sup> Is this hinting at the idea that the descendents of the House of Israel, need to be “born from above”?

divorce *a vinculo* was never granted by the ecclesiastical law except for the most grave reasons. These, according to Lord Coke, <sup>(Co. Litt. 235, a.)</sup> are *causa praecontractus, causa metus, causa impotentiae, seu frigiditytis, causa affinitatis, et causa consanguinitatis*. In England such a divorce bastardizes the issue, and generally speaking, is allowed only on the ground of some preexisting cause. <sup>Reeves' Dom. Rel. 204-5;</sup> but sometimes by act of parliament for a supervenient cause. <sup>1 Bl. Com. 440.</sup> When the marriage was dissolved for canonical causes of impediment, existing previous to its taking place, it was declared *void ab initio*. <sup>invalid from the outset</sup>

4. In the United States, divorces *a vinculo* are granted by the state legislatures for such causes as may be sufficient to induce the members to vote in favor of granting them; and they are granted by the courts to which such jurisdiction is given, for certain causes particularly provided for by law.

5. In some states, the legislature never grants a divorce until after the courts have decreed one, and it is still requisite that the legislature shall act, to make the divorce valid. This is the case in Mississippi. In some states, as Wisconsin, the legislature cannot grant a divorce. <sup>Const. art. 4, is. 24.</sup>

6. The courts in nearly all the states have power to decree divorces *a vinculo*, for, first, causes which existed and which were a bar to a lawful marriage, as, precontract, or the existence of a marriage between one of the contracting parties and another person, at the time the marriage sought to be dissolved took place; consanguinity <sup>blood relation</sup>, or that degree of relationship forbidden by law; affinity in some states, as Vermont <sup>Rev. Stat. tit. 16, c. 63, s.</sup>

1; impotence, (q. v.) idiocy, lunacy, or other mental imbecility, which renders the party subject to it incapable of making a contract; when the contract was entered into in consequence of fraud. Secondly, the marriage may be dissolved by divorce for causes which have arisen since the formation of the contract, the principal of which are adultery cruelty; wilful and malicious desertion for a period of time specified in the acts of the several states; to these are added, in some states, conviction of felony or other infamous crime <sup>Ark. Rev. Stat. c. 50, s. 1, p. 333;</sup> being a fugitive from justice, when charged with an infamous crime. <sup>Laws of Lo. Act of April 2, 1832.</sup>

In Tennessee the husband may obtain a divorce when the wife was pregnant at the time of marriage with a child of color; and also when the wife refuses for two years to follow her husband, who has gone bonafide <sup>sincerely; without intention to deceive</sup> to Tennessee to reside. <sup>Act of 1819, c. 20, and Act of 1835, c. 26 Carr. Nich. & Comp. 256, 257.</sup> In Kentucky and Maine,, where one of the parties has formed a connexion with certain religionists, whose opinions. and practices are inconsistent with the marriage duties. And, in some states, as Rhode Island and Vermont, for neglect and refusal on the part of the husband (he being of sufficient ability) to provide necessaries for the subsistence of his wife. In others, habitual drunkenness is a sufficient cause.

7. In some of the states divorces *a mensa et thoro* are granted for cruelty, desertion, and such like causes, while in others the divorce is *a vinculo*.

8. When the divorce is prayed for on the ground of adultery, in some and perhaps in most of the states, it is a good defence, 1st. That the other party has been guilty of the same offence. 2. That the husband has prostituted his wife, or connived at her amours. 3. That the offended party has been reconciled to the other by either express or implied condonation. (q. v.) 4. That there was no intention to commit adultery, as when the party, supposing his or her first husband or wife dead, married again. 5. That the wife was forced or ravished.

9. The effects of a divorce *a vinculo* on the property of the wife, are various in the several states. When the divorce is for the adultery or other criminal acts of the husband, in general the wife's lands are restored to her; when it is caused by the adultery or other criminal act of the wife, the husband has in general some qualified right of curtesy to her lands; when the divorce is caused by some preexisting cause, as consanguinity, affinity or impotence, in some states, as Maine and Rhode Island, the lands of the wife are restored to her. <sup>1 Hill. Ab. 51, 2. See 2 Ashm. 455; 5 Blackf. 309.</sup> At common law, a divorce *a vinculo matrimonii* bars the wife of dower; <sup>Bract. lib. ii. cap. 39, 4;</sup> but

not a divorce *a mensa et thoro*, though for the crime of adultery. Yet by <sup>Stat. West. 1, 3 Ed. I. c. 84</sup>, elopement with an adulterer has this effect. <sup>Dyer, 195; Co. Litt. 32, a. n. 10; 3 P. Wms. 276, 277.</sup> If land be given to a man and his wife, and the heirs of their two bodies begotten, and they are divorced. *a vinculo*, &c., they shall neither of them have this estate, but he barely tenants for life, notwithstanding the inheritance once vested in them. <sup>Co. Litt. 28.</sup> If a lease be made to husband and wife during coverture, and the husband sows the, land, and afterwards they are divorced *a vinculo*, &c., the husband shall have the emblemments in that case, for the divorce is the act of law. Mildmay's Case. As to personalty, the rule of the common law is, if one marry a woman who has goods, he may give them or sell them at his pleasure. If they are divorced, the woman shall have the goods back again, unless the husband has given them away or sold them; for in such case she is without remedy. If the husband aliened them by collusion, she may aver and prove the collusion, and thereupon recover the goods from the aliencie. If one be bound in an obligation to a feme sole, and then marry her, and afterwards they are divorced, she may sue her former husband on the obligation, notwithstanding her action was in suspense during the marriage. And for such things as belonged to the wife before marriage, if they cannot be known, she could sue for, after divorce, only in the court Christian, for the action of account did not lie, because he was not her receiver to account. But for such things as remain in specie, and may be known, the common law gives her an action of detinue<sup>4</sup>. <sup>26 Hen. VIII. 1.</sup>

10. When a divorce *a vinculo* takes place, it is, in general, a bar to dower; but in Connecticut, Illinois, New York, and, it seems, in Michigan, dower is not barred by a divorce for the fault of the husband. In Kentucky, when a divorce takes place for the fault of the husband, the wife is entitled as if he were dead. <sup>1 Hill. Ab. 61, 2.</sup>

11. - 2. Divorces *a mensa et thoro*, are a mere separation of the parties for a time for causes arising since the marriage; they are pronounced by tribunals of competent jurisdiction. The effects of the sentence continue for the time it was pronounced, or until the parties are reconciled. A divorce *a mensa et thoro* deprives the husband of no marital right in respect to the property of the wife. <sup>Reeve's Dom. Rel. 204-5. Cro. Car. 462; but see 2 S. & R. 493.</sup> Children born after a divorce *a mensa et thoro* are not presumed to be the husband's, unless he afterwards cohabited with his wife. <sup>Bac. Ab. Marriage, &c. E. 12.</sup> By the civil law, the child of parents divorced, is to be brought up by the innocent party, at the expense of the guilty party. <sup>Ridley's View, part 1, ch. 3, sect. 9, cites 8th Collation. Vide, generally, 1 Bl. Com. 440, 441 3 Bl. Com. 94; 4 Vin. Ab. 205; 1 Bro. Civ. Law, 86; Ayl. Parerg. 225; Com. Dig. Baron and Feme, C;-Coop. Justin. 434, et seq.; 6 Toullier, No. 294, pa. 308; 4 Yeates' Rep. 249; 5 Serg. & R. 375; 9 S. & R. 191, 3; Gospel of Luke, eh, xvi. v. 18; of Mark, ch. x. vs. 11, 12; of Matthew, ch. v. v. 32, ch. xix. v. 9; 1 Corinth. ch. vii. v. 15; Poynt. on Marr. and Divorce, Index, h. t.; Merl. Rep. h. t.; Clef des Lois Rom. h. t.</sup> As to the effect of the laws of a foreign state, where the divorce was decreed, <sup>see Story's Confl. of Laws, ch. 7, 200.</sup> With regard to the ceremony of divorce among the Jews, see <sup>1 Mann. & Gran. 228; C. 39. Eng. C. L. R. 425, 428</sup>. And as to divorces among the Romans, <sup>see Troplong, de l'Influence du Christianisme sur le Droit Civil des Romains, ch. 6. p. 205.</sup>

## COVERTURE – No contracts can not be made by the woman without his consent

### 1. The state or condition of a married woman.

<sup>4</sup> DETINUE remedies.

1. The name of an action for the recovery of a personal chattel in specie. <sup>3 Bl. Com. 152; 3 Bouv. Inst. n. 3472; 1 J. J. Marsh. 500.</sup>

2. This action may be considered, 1. With reference to the nature of the thing to be recovered. 2. The plaintiff's interest therein. 3. The injury. 4. The pleadings. 5. The judgment. 3.- 1. The goods which it is sought to recover, must be capable of being distinguished from all others, as a particular horse, a cow, &c., but not for a bushel of grain. <sup>Com. Dig. Detinue, B, C; 2 Bl. Com. 152; Co. Litt. 286 b; Bro. Det. 51.</sup> Detinue cannot be maintained where the property sued for had ceased to exist when the suit was commenced. <sup>2 Dana, 332. See 5 Stew. & Port. 123; 1 Ala. R. 203. 4. -</sup>

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.** <sup>Com. Dig. Baron and</sup>

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. <sup>Chit. Contr. 40.</sup>

4. In some cases, when coercion has been used by the husband to induce her to commit crime, she is exempted from punishment. <sup>1 Hale, P. C. 516; 1 Russ. Cr. 16.</sup>

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

## **CURTESY, or COURTESY**

Scotch law. A life-rent given by law to the surviving husband, of all his wife's heritage of which she died infert<sup>5</sup>, if there was a child of the marriage born alive. The child born of the marriage must be the mother's heir. If she had a child by a former marriage, who is to succeed to her estate, the husband has no right to the curtesy while such child is alive; so that the curtesy is due to the husband rather as father to the heir, than as husband to an heiress, conformable to the Roman law, which gives to the father the usufruct of what the child succeeds to by the mother. <sup>Ersk. Pr. L. Scot. B. 2, t. 9, s. 30. Vide Estate by the curtesy</sup>

## **ELOPEMENT**

1. This term is used to denote the departure of a married woman from her husband, and dwelling with an adulterer.

2. While the wife resides with her husband, and cohabits with him, however exceptionable her conduct may be, yet he is bound to provide her with necessaries, and to pay for them; but when she elopes, the husband is no longer liable for her alimony, and is not bound to pay debts of her contracting when the separation is notorious; and whoever gives her credit under these circumstances, does so at his peril. <sup>Chit. Contr. 49; 4 Esp. R. 42; 3 Pick. R. 289; 1 Str. R. 647, 706; 6 T. R. 603; 11 John. R. 281; 12 John. R. 293; Bull. N. P. 135; Stark. Ev. part 4, p. 699.</sup>

## **EMBLEMETS**

rights.

1. By this term is understood the crops growing upon the land. By crops is here meant the products of the earth which grow yearly and are raised by annual expense and labor, or "great manurance and industry," such as grain; but not fruits which grow on trees which are not to be planted yearly, or grass, and the like, though they are annual. <sup>Co. Litt. 55, b; Com. Dig. Biens, G; Ham. Part. 183, 184.</sup>

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<sup>5</sup> **ineft**: past participle of **infeoff**. Alternative form of **enfeoff** To put (a person) in legal possession of a freehold interest; to transfer a fief to.

ENFEOFF (TO...) To make a gift of any corporeal hereditaments to another. Vide Feoffment.

See Cestui Que Bouvier's (Cestui que: to signify the beneficiary of an estate held in trust. He for whose benefit another person is enfeoffed or seised of land or tenements, or is possessed of personal property. )

See Parable-of-the-Talents-Mat-25-14-30-and-Parable-of-the-Minas-Luk-19-11-27 Article 812

See Trusts, OPERATION OF LAW

2. It is a general rule, that when the estate is terminated by the act of God in any other way than by the death of the tenant for life, or by act of the law, the tenant is entitled to the emblements; and when he dies before harvest time, his executors shall have the emblements, as a return for the labor and expense of the deceased in tilling the ground.<sup>9</sup> Johns. R. 112; 1 Chit. P. 91; 8 Vin. Ab. 364 Woodf. L. & T. 237 Toll. Ex. book 2, c. 4; Bac. Ab Executors, H 3; Co. Litt. 55; Com. Dig. Biens G.; Dane's Ab. Index, h. t.; 1 Penna. R. 471; 3 Penna. 496; Ang. Wat. Co. 1 Bouv. Inst. Index, h. t.

## **ALIENATE**

aliene, alien. This is a generic term applicable to the various methods of transferring property from one person to another. Lord Coke, says,<sup>(1 Inst. 118 b,)</sup> alien cometh of the verb alienate, that is, alienum facere vel ex nostro dominio in alienum trawferre sive rem aliquam in dominium alterius transferre. These methods vary, according to the nature of the property to be conveyed and the particular objects the conveyance is designed to accomplish. It has been held, that under a prohibition to alienate, long leases are comprehended.<sup>2 Dow's Rep. 210.</sup>