

Divorce awareness week 24-28 July 2023



# DIVORCE AWARENESS

General introduction,  
matrimonial regimes, grounds  
for divorce, reasons for divorce  
and jurisdiction



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# Webinar overview



- General introduction, legislation, overview
- It is important to know how you are married (Matrimonial property regime)
- Different types of marriages in South Africa
- Legal grounds for divorce in South Africa
- Most common reasons for a divorce
- Things to think about before considering divorce
- Which court does a person go to get a divorce in South Africa?





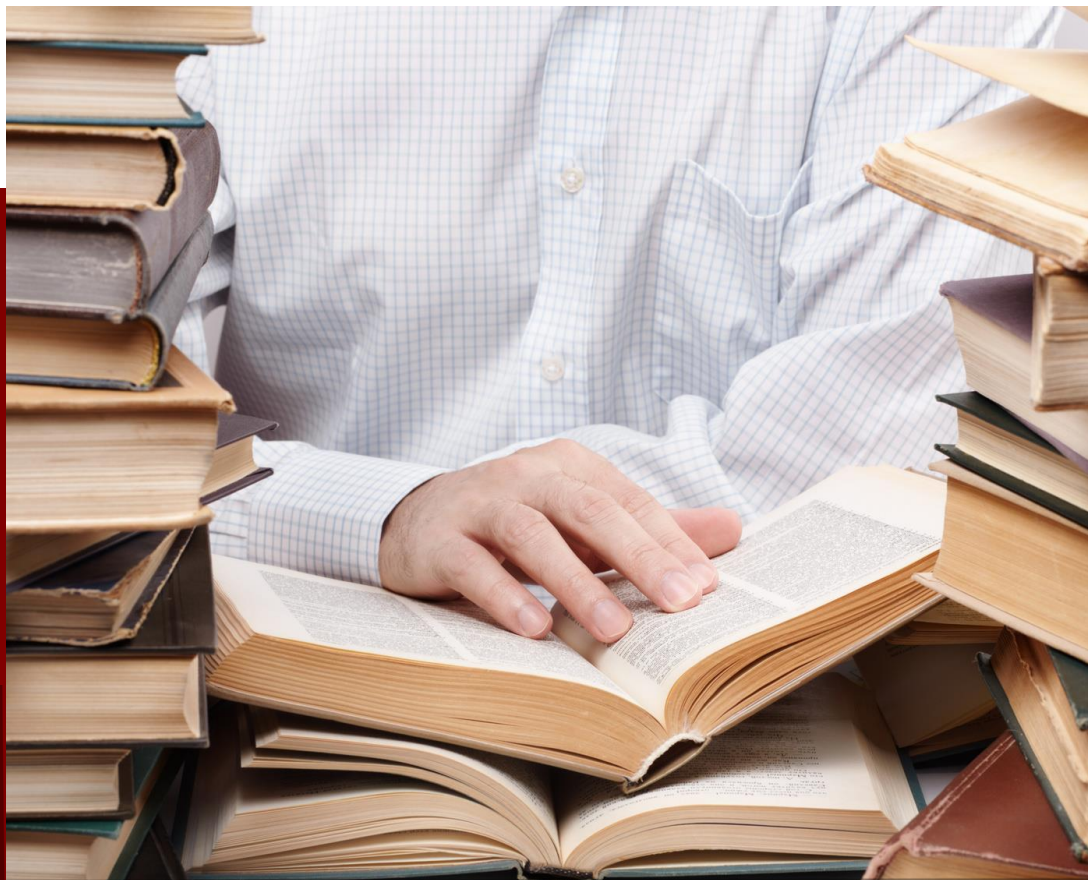
What to expect

# Structure of our Lunch and Learn webinars

Pre-reading  
material

Webinar

Resources &  
Templates



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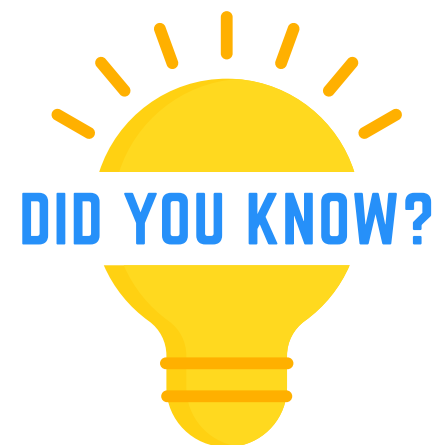
General introduction, marital regimes & grounds for divorce

# General introduction



## Divorce and Marriage Statistics 2021 – published on 27 February 2023

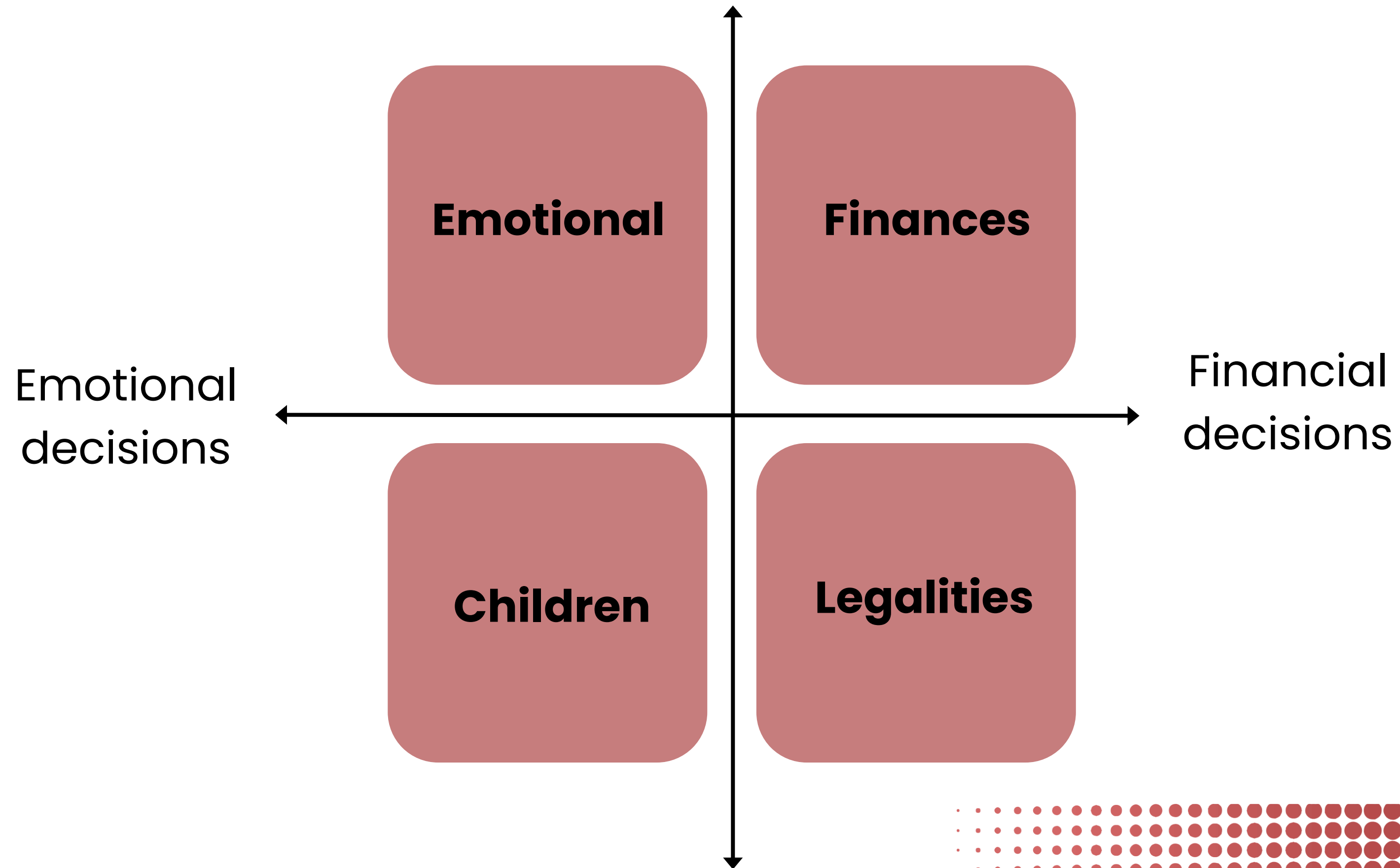
- **106 499** number of marriages
- **18 208** divorces finalised (increase by 13.1%)
- statistically **18 out of every 100** will get divorced



18% of the mammal species on our planet are different types of bats

General introduction, marital regimes & grounds for divorce

# General introduction



General introduction, marital regimes & grounds for divorce

# It is important to know how you are married



✓ Married in community of property (default)

✓ Married out of community of property without the accrual (ANC)

✓ Married out of community of property with the accrual (ANC)



General introduction, marital regimes & grounds for divorce

**It is important to know how you are married**



**Married in community of property (default)**





General introduction, marital regimes & grounds for divorce

**It is important to know how you are married**



**Married out community of property without accrual (ANC)**

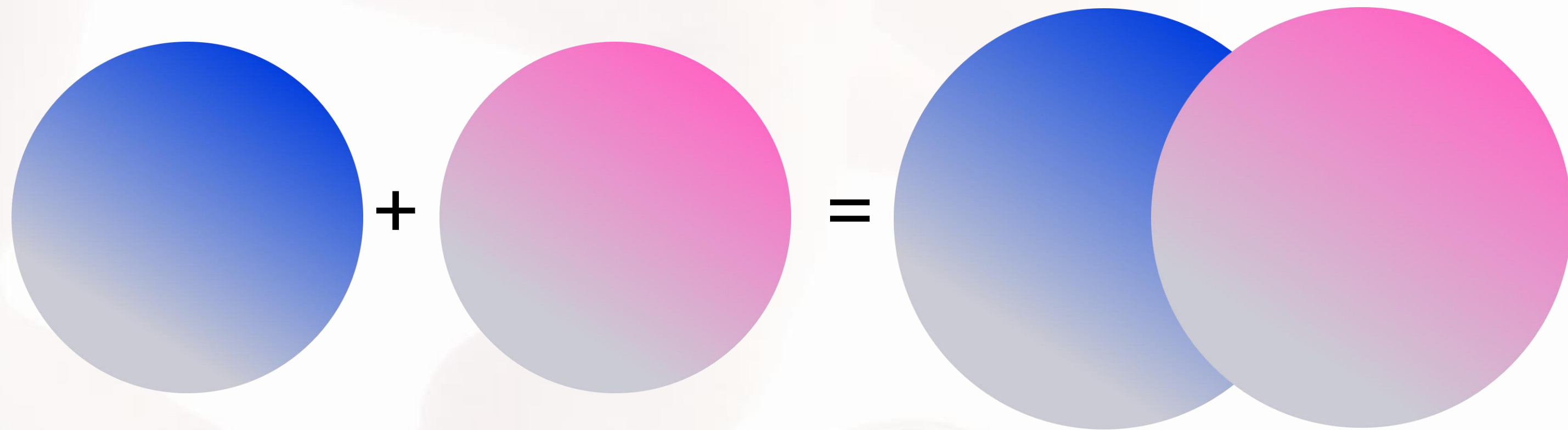
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General introduction, marital regimes & grounds for divorce

**It is important to know how you are married**



**Married out community of property with accrual (ANC)**



Each party shares in half of the growth of the other party's estate

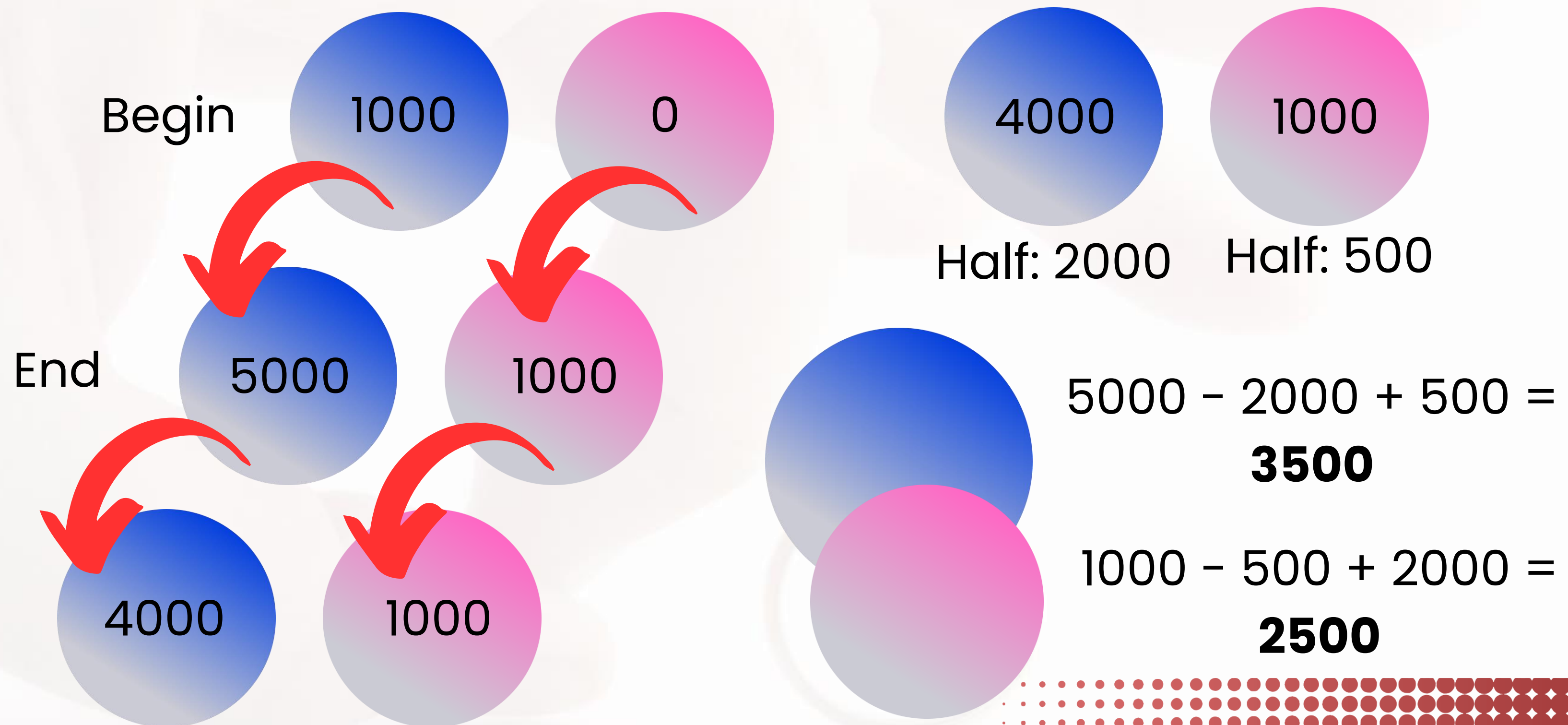


General introduction, marital regimes & grounds for divorce

# It is important to know how you are married



## Married out community of property with accrual (ANC)



# It is important to know how you are married



## Married in community of property (default)

- spouses become one
- jointly own all assets and liabilities
- do not have your own legal identity or separate estate apart from your spouse

## Married out of community of property without the accrual (ANC)

- estate of each spouse is kept separate
- what is mine is mine, and what is yours is yours
- one spouse might leave with less than the spouse with the stronger financial position

## Married out of community of property with the accrual (ANC)

- spouses maintain separate estates as prior to their marriage
- spouse whose estate shows the smallest growth is entitled to half of the growth of the estate of the spouse with the largest estate



General introduction, marital regimes & grounds for divorce

# Different types of marriages in South Africa



Civil marriages



Civil unions  
marriages



Customary  
marriages

There is **no common law marriage** in South Africa. Cohabitation does not create any automatic legal rights and duties between couples.



General introduction, marital regimes & grounds for divorce

# What are the three legal grounds for divorce in South Africa?



Mental  
illness



Continuous unconsciousness

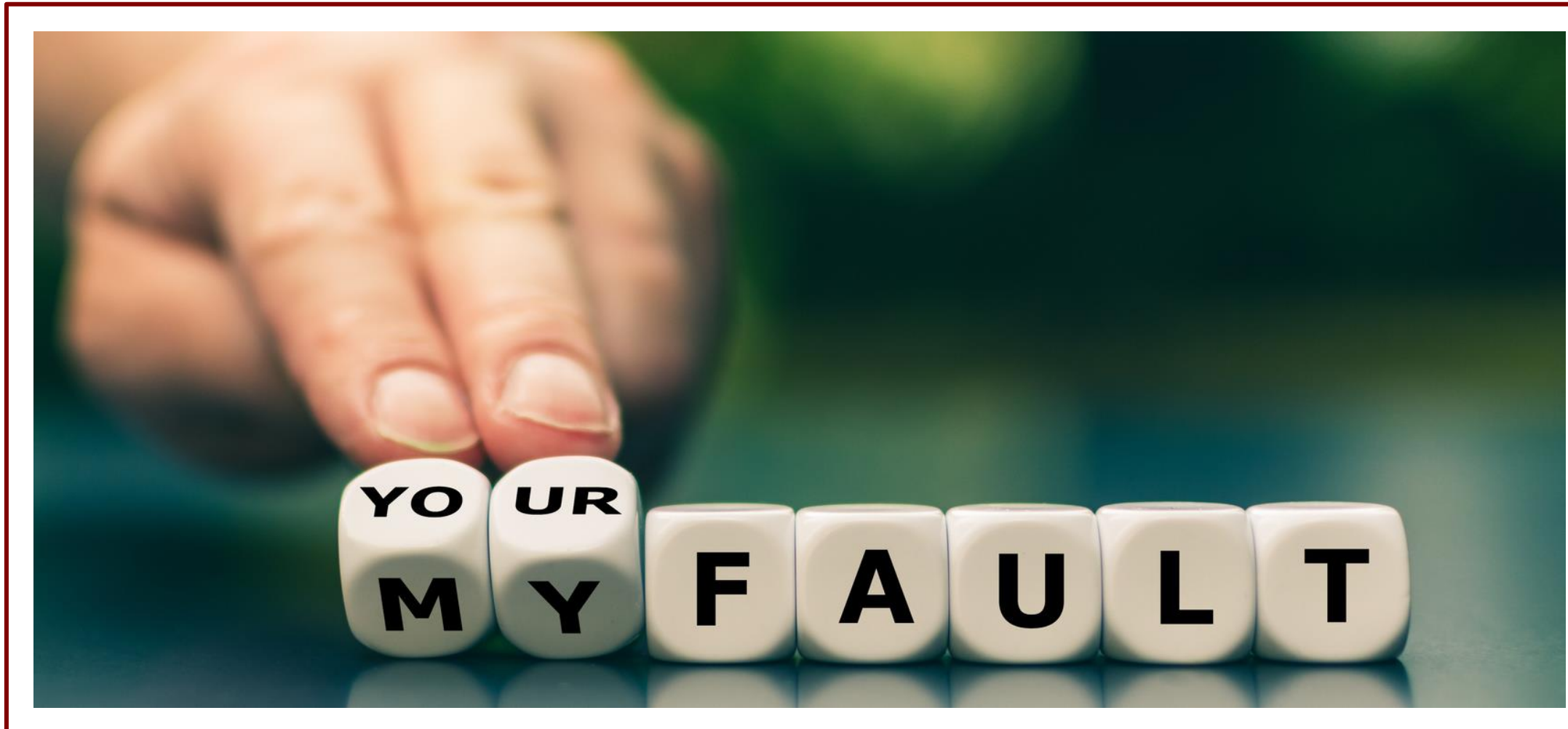


The irretrievable breakdown of the  
marriage



General introduction, marital regimes & grounds for divorce

# What are the three legal grounds for divorce in South Africa?



...no reasonable prospect for the marriage relationship to continue...

General introduction, marital regimes & grounds for divorce

# **Irretrievable breakdown of the marriage**



...no reasonable prospect for the marriage relationship to continue...

- emotional abuse;
- physical abuse;
- verbal abuse;
- if the other partner has an addiction problem like drugs, alcohol or gambling;
- if the parties are no longer in love with each other





# Irretrievable breakdown of the marriage

- Principle of irretrievable breakdown
- Factors of irretrievable breakdown
  - ✓ Lack of meaningful communication
  - ✓ Attempt at reconciliation
  - ✓ Domestic violence
  - ✓ Where the partner/spouse has left the communal home and has not yet returned
  - ✓ Infidelity
  - ✓ Section 4 of the Divorce Act

General introduction, marital regimes & grounds for divorce

## Most common reasons for a divorce



Inconsolable differences

Use of money

Constant conflict

Infidelity

Lack of intimacy

Abuse

Addiction



General introduction, marital regimes & grounds for divorce

# Things to think about before considering divorce



- Temporary feelings vs irretrievable breakdown of your marriage
  - Don't rush life-altering decisions
    - Have an exit strategy ready
    - Keep your dignity in tact
- Consider what's best if you have children
  - Consider financial implications
- Consider amicable divorce / settlement
  - Support structures

General introduction, marital regimes & grounds for divorce

# Which court does a person go to get a divorce in South Africa ?



High Court










Regional Magistrate Court



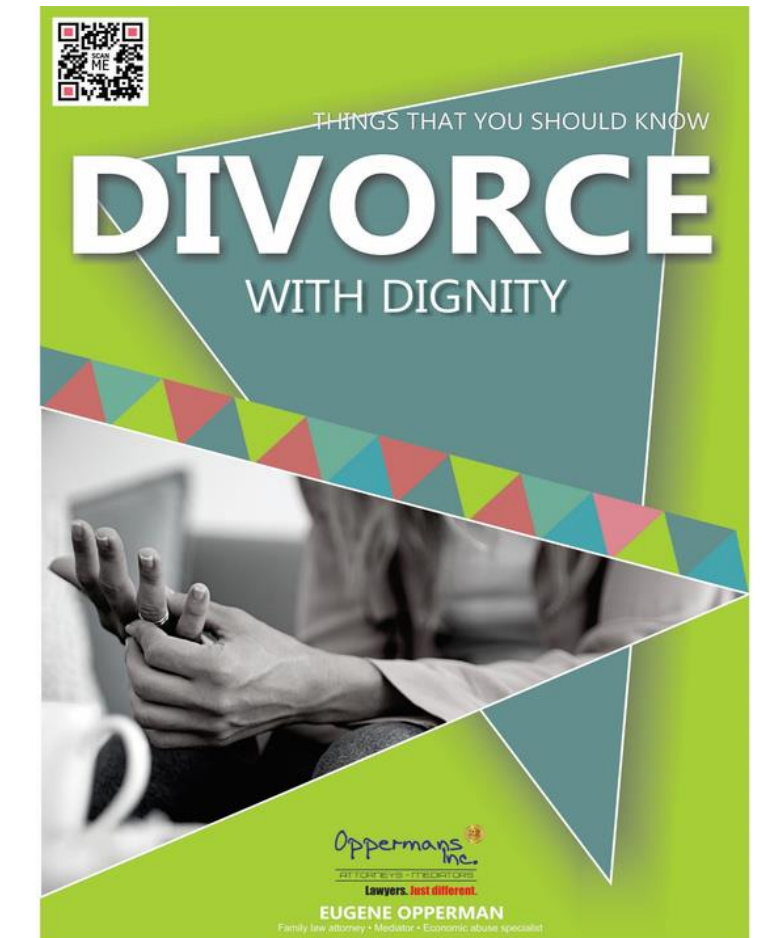
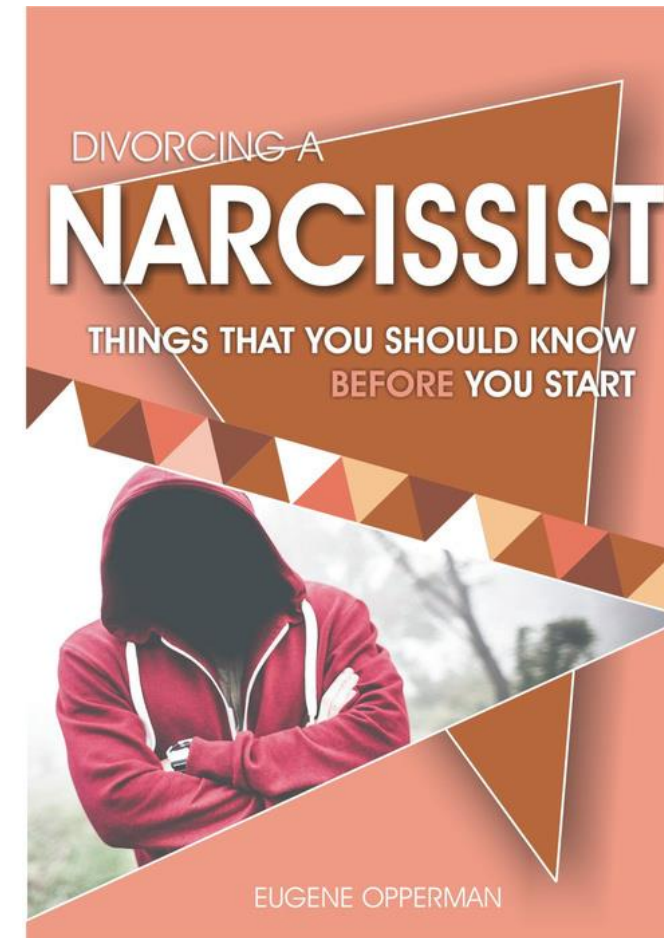
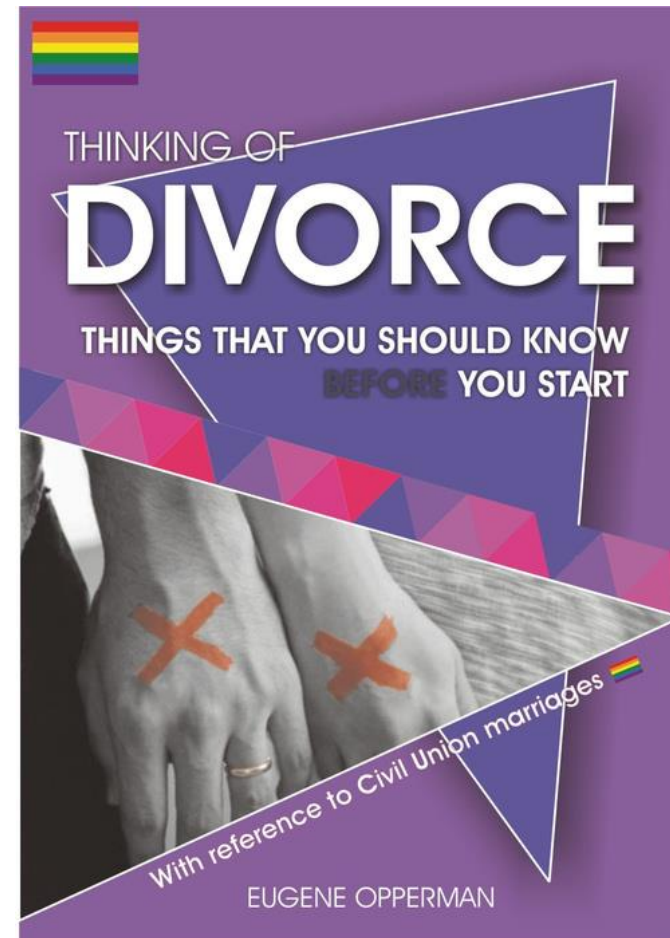
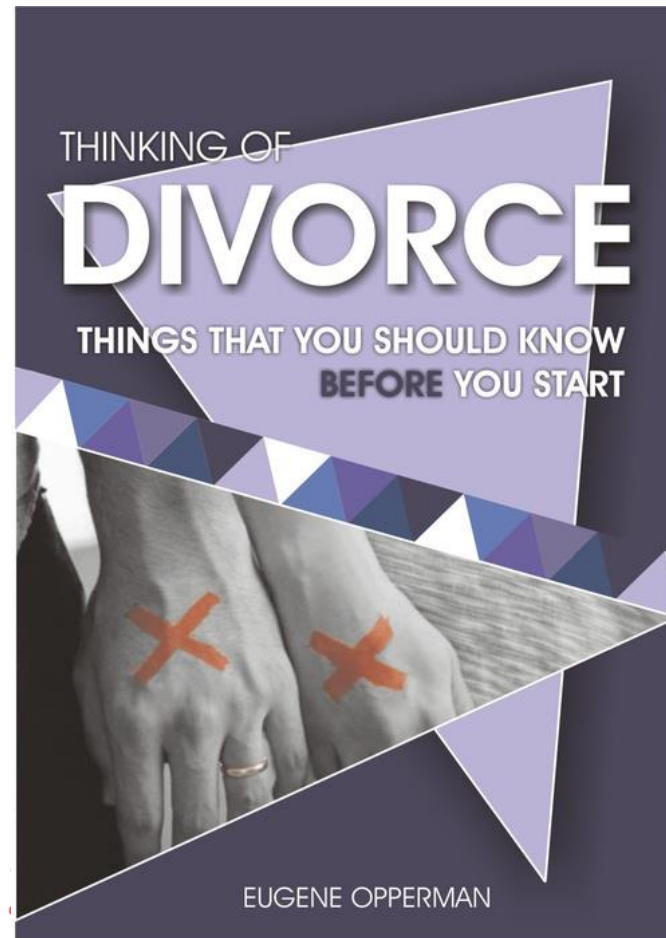


## Common documents needed ?

-  Certified ID copies of yourself and of your spouse
-  Ante-nuptial contract (if applicable)
-  Certified copies of children's birth certificates (if applicable)
-  Marriage certificate
-  Proof of address (not older than 3 months)
-  Date of your marriage
-  A list of assets in your joint and/or separate estates.

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# Free downloadable ebooks



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Thanks to our host & co-presenter(s):  
Eugene Opperman (Director, attorney & mediator from Oppermans Inc Attorneys)  
Erin O'Neale (Candidate attorney from Oppermans Inc – compiling the handout)

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# Legal disclaimer:



Although every measure was taken to ensure that the information contained in this webinar is legally correct at the time when it was presented, the information given and presented is ultimately the view of the individual presenter(s) and constitutes an opinion and interpretation of certain portions of the law. It should not be construed as legal advice. The information presented is for educational and informative purposes and if you require legal assistance with your legal matter, you are advised to contact a reputable family law practitioner to assist.

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