

Guidance Note	Forms and Precedents	Checklists	Other Resources
1. BIRTH			
<i>1.1 Legal recognition of the unborn child</i>			
1.1.1 Legal subjectivity of natural persons			
<i>1.2 Paternity</i>			
1.2.1 Claims of paternity			
1.2.2 Paternity testing under the Children's Act			
1.2.3 Paternity testing under the Maintenance Act			
<i>1.3 Maintenance and the unborn child</i>			
1.3.1 The duty to support the unborn child			
1.3.2 Pregnancy and lying-in expenses			
<i>1.4 Registration of births</i>			
1.4.1 How to register the birth of a child	Form DHA-24 - Notice of birth	Items that accompany Form DHA-24	
	Form DHA - 288/B - Affidavit given by next of kin/legal guardian		
1.4.2 Late registrations of birth	Form DHA - BI - 154 - Application for birth certificate	Items that accompany Form DHA-24/LRB - after 30 days of birth but before the child is older than one year	
	Form DHA - 288/B - Affidavit given by next of kin/legal guardian	Items that accompany Form DHA-24/LRB - where a child is older than one year	
		Items that accompany Form DHA-24/LRB - where child is between one year and seven years in age	
		Items that accompany Form DHA-24/LRB - where child is older than seven years in age	
1.4.3 Registering the birth of a child born out of wedlock	Form DHA-24 - Notice of birth		
	Form DHA - BI - 154 - Application for birth certificate		
	Form DHA - 288/C - Affidavit for confirmation of paternity for children born out of wedlock		
<i>1.5 Termination of pregnancy</i>			
1.5.1 When can a pregnancy be terminated			

Guidance Note	Forms and Precedents	Checklists	Other Resources
1.5.2 Termination of pregnancy and minors			
<i>1.6 Interests of the unborn child and nasciturus fiction</i>			
1.6.1 Patrimonial interests			
1.6.2 Succession			
<i>1.7 Surrogacy</i>			
1.7.1 Surrogacy and the Children's Act	Surrogacy motherhood agreement		
1.7.2 International surrogacy			
<i>1.8 Assisted reproductive technology</i>			
1.8.1 Assisted reproductive technology and parental rights			
1.8.2 Assisted reproductive technology in divorce proceedings and same sex unions			

2. MARRIAGE			
<i>2.1 Engagement and antenuptial contracts</i>			
2.1.1 The legal consequences of engagement			
2.1.2 Considerations relevant to antenuptial contracts			
2.1.3 Requirements for a valid antenuptial contract	Precedent of citation of a minor in an antenuptial contract		
	Antenuptial Contract with accrual		
	Antenuptial Contract without accrual		
2.1.4 Termination of engagement			
<i>2.2 Legality and marriage</i>			
2.2.1 Legal requirements	Form DHA 32 - Consent to the marriage of a minor	Procedure to obtain marriage certificates	Prohibited degrees of relationships flowchart
	Form DHA 31 - Affidavit for the purpose of marriage by a person without South African identity document	Prohibited Marriages in South African law	
2.2.2 Void and voidable marriages			

Guidance Note	Forms and Precedents	Checklists	Other Resources
2.3 Consequences of marriages			
2.3.1 Various consequences resulting from marriage			
2.4 Proprietary consequences			
2.4.1 In community of property			
2.4.2 Out of community of property with no accrual	Antenuptial Contract without accrual		
2.4.3 Accrual	Antenuptial Contract with accrual		
	Antenuptial Contract without accrual		
2.4.4 Insolvency			
2.4.5 Donations	Form IT 144 – Declaration by donor		
2.4.6 Tax implications			
2.4.7 Family companies and partnerships			
2.5 Cohabitation			
2.5.1 What is cohabitation?		Areas to consider in drafting a life partnership agreement	
2.5.2 Universal partnerships			
2.5.3 Cohabitation agreements	Cohabitation agreement		
2.6 Civil Union Act			
2.6.1 What is a civil union			
2.6.2 Civil union requirements and consequences			
2.7 Customary marriages			
2.7.1 Recognition of Customary Marriages Act			
2.7.2 Registration of customary marriages	Form A - Application for registration or enquiry into existence of customary marriage		
	Form B - Acknowledgement of receipt of application for registration of customary marriage		
	Form C - Customary marriage certificate		
2.7.3 Proprietary consequences			

Guidance Note	Forms and Precedents	Checklists	Other Resources
2.8 Islamic and Hindu marriages			
2.8.1 Validity			
2.8.2 Proprietary consequences of Islamic and Hindu marriages			
2.8.3 Children born of Islamic and Hindu marriages			
2.9 Foreign marriages			
2.9.1 Recognition in South Africa			
2.10. Variation of marital regime section 21 applications			
2.10.1 Requirements for an application to vary a marital regime	Contract in terms of section 21 (2)		
2.10.2 Procedure to register postnuptial agreement		Guidelines to register a postnuptial agreement	

3. THE DISSOLUTION OF MARRIAGE BY DEATH AND ANNULMENT

3.1 Dissolution of marriage on death of a spouse			
3.1.1 The effect of death of a spouse in marriages in community of property			
3.1.2 The effect of death of a spouse in marriages out of community of property			
3.2 Annulment			
3.2.1 Grounds of annulment			

4. THE DISSOLUTION OF MARRIAGE BY DIVORCE

4.1 Preliminary steps			
4.1.1 Pre-litigation process		Information and documents required for initial consultation	
4.1.2 Grounds for divorce			
4.2. Consequences of divorce			
4.2.1 Proprietary consequences of divorce		Instituting proprietary claims for divorce	
4.2.2 Proprietary consequences of community of property marriages			
4.2.3 Proprietary consequences of out of community of property marriages			
4.2.4 Calculation of the accrual			

Guidance Note	Forms and Precedents	Checklists	Other Resources
4.2.5 Forfeiture of benefits			
4.2.6 Redistribution			
4.2.7 Pensions			
4.3 Divorce procedures			
4.3.1 Mediation in divorce matters	Settlement agreement		
	Agreement to mediate		
	Statement of outcome of attempted mediation		
4.3.2 Settlement in divorce	Settlement agreement		
4.4. Opposed divorces			
4.4.1 Procedure in contested divorce			
4.4.2 Summons and jurisdiction	Particulars of claim		
	Summons		
	Notice of intention to defend		
4.4.3 Pleadings			
	Particulars of claim		
	Defendant's plea		
	Statistics of divorce form		
	Annexure A – Arrangements regarding dependent and minor children		
	Annexure B – Request to family advocate to institute an enquiry		
4.4.4 Discovery of documents	Subpoena		
	Notice in terms of rule 35(1)		
	Notice in terms of rule 35(6)		
	Notice in terms of rule 35(8)		
	Notice in terms of rule 35(10)		
	Discovery affidavit		
4.4.5 Further discovery	Notice of application to compel compliance with the applicant's notice in terms of rule 35(3)		
	Notice in terms of rule 35(3)		

Guidance Note	Forms and Precedents	Checklists	Other Resources
	Supporting affidavit to compel compliance in term of rule 35(3)		
4.4.6 Pre-trial conference	Notice in terms of rule 37(1)		
4.4.7 Stages of trial		Opening statement for plaintiff's counsel	
		Opening statement for defendant's counsel	
		Steps for examination in chief	
		Cross examination of a witness	
		Re-examination of a witness	
		Closing argument steps	
4.4.9 Undefended divorce	Notice of withdrawal of defence		
	Notice of set down		
	Annexure B – Request to family advocate to institute an enquiry		
	Settlement agreement		
4.5 Rescission, suspension and variation of orders			
4.5.1 Procedure			
4.6 Procedure when parties commence with their own divorce			
4.6.1 Procedure to obtain a divorce without an attorney	Statistics of divorce form		
	Annexure A – Arrangements regarding dependent and minor children		
	Annexure B – Request to family advocate to institute an enquiry		

5. CHILDREN

5.1 Definition of the child and majority

5.1.1 Majority and the Children's Act

5.1.2 Emancipation

5.2. Legal capacity

5.2.1 Contractual obligations and juristic acts

5.2.2 Delictual liability

Guidance Note	Forms and Precedents	Checklists	Other Resources
5.2.3 Criminal liability and the Child Justice Act			
5.2.4 The rights of the child to participate in proceedings concerning them			
5,3 Legislation and the realisation of children's rights			
5.3.1 Constitutional rights			
5.3.2 Rights of the child in terms of international law			
5.3.3 The Children's Act 38 of 2005			
5,4 The paramount principle of the best interests			
5.4.1 What factors need to be considered			
5.4.2 The international standard			
5,5 Parental responsibilities and rights			
5.5.1 Mothers			
5.5.2 Married fathers			
5.5.3 Unmarried fathers			
5.5.4 Persons other than the child's parents			
5,6 Guardianship			
5.6.1 Guardianship and the Children's Act			
5.6.2 Assignment of guardianship			
5,7 Care			
5.7.1 The concept of "care"			
5.7.2 Co-parenting and the exercise of parental rights and responsibilities by co-holders	Parental responsibilities and rights agreement		
5,8 Contact			
5.8.1 The concept of "contact"			
5.8.2 Defined contact			
5,9 Parenting plans			
5.9.1 What is a parenting plan	Parenting plan		
5.9.2 How is a parenting plan implemented	Form 8 – Application for registration of a parenting plan or for parenting plan to be made an order of court		

Guidance Note	Forms and Precedents	Checklists	Other Resources
	Form 9 – Statement of family advocate, social worker or psychologist that parenting plan was prepared after assistance		
	Form 10 – Statement of social worker or other suitably qualified person that parenting plan was prepared after mediation		
5.9.3 Mediation and parenting plans	Form 4 – General requirements regarding parental responsibilities and rights agreement		
	Form 5 – Statement of family advocate concerning parental responsibilities and rights agreement		
	Form 6 – Statement of outcome of mediation		
5,10 The Children's Court			
5.10.1 Jurisdiction			
5.10.2 Court orders	Form 8 – Application for registration of a parenting plan or for parenting plan to be made an order of court		
5.10.3 Court proceedings		Checklist for proceedings in the children's court	
5.10.4 Participation of the child			
5,11 Children in need of care and protection			
5.11.1 Circumstances of a child in need of care and protection			
5.11.2 Care and protection proceedings			
5.11.3 Removal of child or perpetrator			
5.11.4 Alternative care			
5.11.5 Foster care			
5.11.6 Child and youth care centres			
5.11.7 Drop-in centres			

Guidance Note	Forms and Precedents	Checklists	Other Resources
5.12 Sexual offences against children			
5.12.1 Offences			
5.12.2 Child protection register	Form 22 – Reporting of abuse or deliberate neglect of child		
	Form 23 – Reporting of abuse or deliberate neglect of child to Director-General		
5.12.3 National register for sexual offences			

6. MAINTENANCE

Guidance Note	Forms and Precedents	Checklists	Other Resources
6.1 Duty of support			
6.1.1 Parents and children			
6.1.2 Grandparents and grandchildren			
6.1.3 Spouses			
6.1.4 Adult children			
6.2 Spousal maintenance			
6.2.1 Rehabilitative maintenance			
6.2.2 Lump sum and token awards			
6.3 Interim maintenance			
6.3.1 Application for interim maintenance pending divorce			
6.3.2 Procedure for an interim maintenance application	Notice in terms of Rule 43		Interim maintenance
	Applicant's statement in terms of Rule 43		
	Respondent's replying affidavit in terms of Rule 43		
	Notice in terms of Rule 43(4)		
6.3.3 Variation of an interim maintenance order			
6.4 Maintenance enquiries and orders			
6.4.1 The Maintenance Court and its officers			
6.4.2 Complaint and investigation	Form A – Application for maintenance	Documents that accompany a maintenance application	

Guidance Note	Forms and Precedents	Checklists	Other Resources
	Form B – Substitution or discharge of existing maintenance order		
6.4.3 Informal and formal hearings	Form G – Consent and maintenance order		
6.4.4 Evidence and witnesses			
6.4.5 Calculation of maintenance			
6.4.6 Tertiary education			
6.4.7 Medical costs			
6.5 Enforcement and execution			
6.5.1 Criminal law			
6.5.2 Civil law	Form K – Application for enforcement of maintenance or other order		
6.6 Appeals, suspensions, rescissions and variations			
6.6.1 How to appeal a maintenance order	Notice of appeal		
6.6.2 Suspending, rescinding or varying a maintenance order	Form A – Application for maintenance		
	Form B – Substitution or discharge of existing maintenance order		
6.7 Recognition of foreign maintenance orders			
6.7.1 Enforcing a maintenance order in Africa			List of designated countries in terms of REMOA Africa
6.7.2 Enforcing a maintenance order in other countries			List of designated countries in terms of REMOA

7. DOMESTIC VIOLENCE AND HARASSMENT

Guidance Note	Forms and Precedents	Checklists	Other Resources
7.1 Domestic violence			
7.1.1 Key definitions			
7.1.2 Obtaining an interim protection order	Application for protection order		Summary of the procedure relating to domestic violence and harassment interdicts
	Notice to Respondent to submit reasons		
7.1.3 Obtaining a final protection order	Affidavit for purposes of further warrant of arrest		

Guidance Note	Forms and Precedents	Checklists	Other Resources
	Affidavit regarding contravention of protection order		
7.1.4 Competent verdicts			
7.1.5 Breach of the protection order	Affidavit for purposes of further warrant of arrest		
	Affidavit regarding contravention of protection order		
	Warrant of arrest		
7.1.6 Application for discharge of an interim or final protection order	Application for variation or setting aside of protection order		
7.2 Protection from harassment			
7.2.1 Definition of harassment			
7.2.2 Obtaining an interim protection order from harassment	Interim protection order		Summary of the procedure relating to domestic violence and harassment interdicts
7.2.3 Obtaining a final protection order from harassment	Affidavit regarding contravention of protection order		
	Affidavit for purposes of further warrant of arrest		
7.2.4 Competent orders regarding harassment			
7.2.5 Warrants of arrest regarding harassment	Affidavit for purposes of further warrant of arrest		
	Written notice to appear before court		
7.3 Common law			
7.3.1 Peace orders			
7.3.2 Interdicts			

8. DEATH

8.1 Unborn children			
8.1.1 Rights of unborn children to their parents estates			
8.2 Cohabitees			
8.2.1 Rights of cohabitees in intestate succession			
8.2.2 Rights of cohabitees to maintenance			

Guidance Note	Forms and Precedents	Checklists	Other Resources
8.3 Maintenance of Surviving Spouses Act			
8.3.1 The application of the Maintenance of Surviving Spouses Act			
8.3.2 Formalities to lodge a claim with the executor			
8.4 Maintenance of children and the Guardian Fund			
8.4.1 The application of the Guardian's Fund in respect of minor heirs			
8.4.2 Formalities to claim from the Guardian's Fund	Form J341 – Application for allowance or interest		Department of Justice (web)
	CEFTU 3		
	Guardians Fund Affidavit Form		
	Nature of Assistance Required from Guardians Fund, and How Arrived at		
	Form J251 – Application for Monies from Guardians Fund		

9. ABDUCTION

9.1 The Hague Abduction Convention			
9.1.1 Application of the Hague Abduction Convention			Hague Conference on Private International Law (web)
9.1.2 Procedure for cases of international child abduction	Regulations 15 to 38 of the Regulations relating to Children's Courts and International Child Abduction		
	Forms 1 – 18 Annexure to the Regulations relating to Children's Courts and International Child Abduction		
	Form 10 – Application for the return of a child wrongfully removed or retained		
9.1.3 Defences to Hague Abduction Convention applications			Secretary for Justice (as the New Zealand central authority on behalf of TJ) v HJ (2006) NZSC 97
9.1.4 Non-signatory countries			

Guidance Note	Forms and Precedents	Checklists	Other Resources
10. ADOPTION			
10.1 Domestic adoption			
10.1.1 Children who are adoptable			
10.1.2 Persons who may adopt			
10.1.3 The adoption register	Form 58 – Application for the registration of an adoptive parent		
	Form 59 – Application for the registration of an adoptable child		
10.1.4 Consent to adopt	Application for the adoption of a child		
	Withdrawal of consent to adoption by parent or guardian of child		
	Withdrawal of consent by child to adoption		
	Form 61 – Consent by parent to the adoption of child		
	Form 62 – Consent by child to adoption		
10.1.5 Adoption procedures			
10.2 International adoption			
10.2.1 Hague Adoption Convention			
10.2.2 Intercountry adoption of children from within the Republic	Form 67 – Order of inter-country adoption		
10.2.3 Adoption of foreign children to the Republic of South Africa			